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Dec. 7. 1880

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~372~~. 110

WILLIAM R. WALKER, ASSIGNEE IN BANKRUPTCY OF THE NORTH MISSOURI INSURANCE COMPANY, APPELLANT,

vs.

JOSEPH T. REISTER ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED DECEMBER 20, 1877.

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1 THE UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Appeal to district court.

WILLIAM R. WALKER, ASSIGNEE OF THE NORTH Missouri Insurance Company, appellant,
vs.
JOSEPH T. REISTER ET AL., APPELLEES.

Be it remembered that at a regular term of the circuit court of the United States for the eastern district of Missouri, begun and holden at the city of St. Louis, on the third Monday, the 19th day of March, A. D. 1877, and on the first day of said term, there was filed in said court a certain transcript in the above entitled case from the district court of the United States in and for said district, which transcript is in words and figures following, to wit:

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

IN CASE NO. 2622 OF WILLIAM R. WALKER, assignee of the North Missouri Insurance Company, bankrupt, complainant,
against
JOSEPH T. REISTER ET AL., DEFENDANTS.

Be it remembered that (in vacation) the following proceedings took place in this cause on Thursday, the 31st day of December, A. D. 1874, to wit:

WILLIAM R. WALKER, ASSIGNEE OF THE NORTH Missouri Insurance Company, bankrupt, in bankruptcy, complainant,
ag'st
JOSEPH T. REISTER, JOHN F. WILLIAMS, William Forbes, George P. Glaze, John M. Laudon, Philip T. Holman, Isaac Hays, James B. Melon, Alfred L. Shortridge, Web. M. Rubey, Benjamin R. Dysart, Richard A. Melone, Henry S. Glaze, Eli C. D. Shortridge, Charles G. Epperson, and Albert Larrabee, defendants. } In equity.

2

Bill filed.

This day comes the said complainant by Nathaniel Myers, esquire, his solicitor, and files his bill of complaint in this cause against the said defendants.

And the said bill of complaint so filed is in the words and figures following, to wit:

Bill of complaint.

In the district court of the United States for the eastern district of Missouri, November term, 1874.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

To the honorable the judge of said court:

William R. Walker, a citizen of the State of Missouri, and assignee in bankruptcy of the North Missouri Insurance Company, a bankrupt, brings this his bill against Joseph T. Reister, a citizen of the State of Missouri and resident of the eastern district thereof, and John F. Williams, William Forbes, George P. Glaze, John M. Loudon, Philip T. Holman, Isaac Hays, James B. Melone, Alfred L. Shortridge, Web. M. Rubey, Benjamin R. Dysart, Richard A. Melone, Henry S. Glaze, Eli C. D. Shortridge, and Charles G. (Epperson), each and all of whom are citizens of said State of Missouri and residents of the western district thereof, and Alfred Larrabee, a citizen of the State of Illinois.

And thereupon your orator complains and says that heretofore, to wit, on the 22nd day of July, 1867, the said North Missouri Insurance Company was duly incorporated under and by virtue of the laws of the State of Missouri, then in force, and as said corporation, pursuant to said laws and to its articles of association, a copy whereof was duly filed with the secretary of the State of Missouri, it did carry on the business of fire & marine insurance from the date of its incorporation as aforesaid until it was adjudged a bankrupt as hereinafter mentioned.

3 And your orator further shows that afterwards, to wit, on the 2nd day of October, 1873, a petition for adjudication of bankruptcy was filed against said company in the district court of the United States for the eastern district of Missouri, and such proceedings were had upon said petition that afterwards, to wit, on the 8th day of November, 1873, said company was by said court duly adjudged a bankrupt in accordance with the provisions of an act of the Congress of the United States entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, and the acts amendatory thereto; and your orator was thereafter, to wit, on the 21st day of March, 1874, duly appointed by said court assignee of the estate of said bankrupt, and duly qualified as such; and afterwards, to wit, on the 23rd day of March, 1874, Lucien Eaton, esq., one of the registers in bankruptcy of said court, to whom the said case in bankruptcy of said company had been referred by said court, did, by virtue of the authority vested in him under the acts aforesaid, by an instrument under his hand, sealed with the seal of said court and dated the day and year last aforesaid, convey and assign to said plaintiff as such assignee all the estate, real and personal, of the said North Missouri Insurance Company, including all the property of whatever kind of which it was possessed, or in which it was interested or entitled to have, on the said 2nd day of October, 1873, with all its deeds, books, and papers relating thereto, and among other things the notes and bonds hereinafter described; and thereupon complainant entered upon his duties as such assignee, and has ever since continued to exercise and discharge the same.

And your orator further shows that the business of said insurance company before it was declared bankrupt as aforesaid was managed, controlled, and directed by a board of directors consisting of nine mem-

bers, elected by the stockholders of said company at their annual election held on the first Monday of July in each year, which said directors held their said office until their successors were regularly chosen
4 and signified their acceptance of the office, and it was the duty of such board of directors to choose out of their own body a president, vice-president, secretary, & treasurer for said company; and further it was the duty of said directors to exercise a general supervision over the affairs and business of said company; to promote the best interests of said company in all proper ways and by all proper means; to act as faithful guardians of its property, and to save and keep its assets from being misappropriated and misapplied.

And your orator further shows that at the annual election of such board of directors, held on the first Monday of July, 1872, certain of the said respondents, to wit, John F. Williams, William Forbes, Albert Larrabee, James B. Melone, George P. Glaze, Joseph T Reister, John M. Loudon, Philip T. Holman, and Isaac Hays were duly elected directors of said company, and soon thereafter, and during said month of July, 1872, they accepted such office, and duly qualified as such directors and entered upon the discharge of their duties as such, and continued steadily to act as such until after the 19th day of June, 1873, and during the time of the committing the breaches of trust hereinafter set out, and shortly after their said election, and during said month of July, 1872, said directors duly elected the said John F. Williams president, Albert Larrabee secretary, William Forbes vice-president, and James B. Melone treasurer of said company, each and all of whom accepted the said offices respectively, and continued to discharge the functions thereof during the aforesaid period between the month of July, 1872, and the 19th day of June, 1873, and it was the duty of said treasurer faithfully to keep and account for such of the moneys and securities of said company as should be from time to time in his custody as such, and to give bond to the said company in the sum of one hundred thousand dollars to secure the faithful performance by him of his duties as such treasurer.

And your orator further shows that afterwards, to wit, on the 18th day of January, 1873, the said James B. Melone, as principal,
5 and the said Alfred L. Shortridge, Web. M. Rubey, Benjamin R. Dysart, Richard A. Melone, Henry S. Glaze, Eli C. D. Shortridge, and Charles G. Epperson, as sureties, did execute and deliver to the said insurance company their bond of that date, signed and sealed by them respectively, in the sum of one hundred thousand dollars ($100,000), conditioned for the faithful performance and discharge by the said James B. Melone of the said duties of his said office of treasurer for the year beginning July 1st, 1872, and ending July 1st, 1873.

And your orator further shows that during the time the said John F. Williams, William Forbes, Albert Larrabee, James B. Melone, George P. Glaze, Joseph T. Reister, John M. Loudon, Philip T. Holman and Isaac Hays were such directors as aforesaid, the said company owned and possessed among other things a large number of the bonds of Schuyler County, Missouri, the aggregate par value of which was $75,000.00 (seventy-five thousand dollars), and the real market value of which was $63,750.00 (sixty-three thousand seven hundred and fifty dollars); also a large number of the bonds of Macon County, Missouri, the aggregate par value of which was $31,500.00 (thirty-one thousand five hundred dollars), and the real market value of which was twenty-six thousand seven hundred and seventy-five dollars ($26,775.00); also a large number of the bonds of the Burlington and Southwestern Railroad Company of the aggregate par value of $13,000 (thirteen thousand dollars), and

the real market value of which was $11,050.00 (eleven thousand and fifty dollars); also a large number of the bonds of Knox County, Missouri, of the aggregate par value of $8,500.00 (eight thousand five hundred dollars), and the real market value of which was $7,225.00 (seven thousand two hundred and twenty-five dollars); also a lot of normal school bonds of Adair County, Missouri, the aggregate par value of which was $350.00 (three hundred and fifty dollars), and the actual
6 value of which was 295\frac{40}{100}$ (two hundred and ninety-five and $\frac{40}{100}$ dollars); also one Masonic bond of the par and real value of $100.00 (one hundred dollars); also a certain promissory note made by one William E. Moberly, for the sum of $27,000.00 (twenty-seven thousand dollars), on which was credited the sum of $13,500.00 (thirteen thousand five hundred dollars); also one other promissory note made by said Moberly, for the sum of $13,500.00 (thirteen thousand five hundred dollars); and the first of which, to wit, said note for $27,000.00, was secured by a deed of trust on certain real estate executed by said Moberly and wife, said two notes being of great value, to wit, of the value of $27,000.00 (twenty-seven thousand dollars), making altogether bonds and notes of the total real value of $136,195$\frac{40}{100}$ (one hundred and thirty-six thousand one hundred and ninety-five and $\frac{40}{100}$ dollars), a more exact description of which said bonds and notes your orator is unable to give.

And your orator further shows that said bonds and notes came into the possession and custody of said Melone as such treasurer during the term for which he held the said office of treasurer as hereinbefore set forth, and remained in the possession and custody of said Melone as treasurer aforesaid until they were disposed of as hereinafter stated, and that during all the time that said bonds and notes were in the possession and custody of said Melone as such treasurer, the same were under the control of said directors.

And your orator further shows that by the laws of the State of Missouri then in force relating to fire and marine insurance companies incorporated under the laws of this State, it was provided among other things that it should be the duty of the president or vice-president and secretary or a majority of the directors of every such insurance company annually, on the first day of January, or within thirty days there-
7 after, to prepare under oath and deposit in the office of the superintendent of the insurance department of Missouri a statement made up for the last fiscal year of said company, showing among other things the property or assets held by such company, specifying among other things the amount of loans secured by bonds and mortgages or by deeds of trust, the amount of notes and bills receivable and maturing, and the amount of other securities held by such company, specifying what they were and as nearly as may be their cash value; and it was further provided by the said laws that it should be the duty of the superintendent of the insurance department aforesaid, whenever he should have good reason to suspect the affairs of any such insurance company to be in an unsound condition, to require of said company a special statement of its affairs, and if such superintendent should not be satisfied that the affairs of such company were in a safe condition, then the said superintendent should have power to make a personal examination of the affairs of such company.

And your orator further shows that on or about the first day of January, 1873, the said directors of said North Missouri Insurance Company, in pursuance of the duty thus imposed upon them by law, caused to be prepared under oath and to be deposited in the office of the superni-

tendent of the insurance department of Missouri a statement made up for the last preceding fiscal year of said company as required by said laws of Missouri, and among other assets belonging to said company as set forth in said statement so procured to be made by said directors and officers, respondents herein, were said bonds of Macon County and of Schuyler County, Missouri, and said notes of said Moberly, which in said statement were represented as being of the real values hereinbefore set forth; and afterwards, to wit, some time in the month of May,
8 1873, the superintendent of the insurance department of Missouri, not being satisfied that the affairs of said company were then in a safe condition, made a personal examination of the affairs of said company, and said directors and officers, respondents herein, then and there represented, and caused to be represented to said superintendent, that said company then owned and possessed among other things, not only said bonds of Macon and Schuyler Counties, and said notes of said Moberly, but also said bonds of Knox and Adair Counties, and of said Burlington and Southwestern Railroad Company, and said Masonic bond, and that each and all of the same were of the real values hereinbefore set forth; and in fact said directors and officers exhibited and caused to be exhibited the said assets to the said superintendent, and also to the superintendent of the insurance department of the State of Ohio, and made the same representations and statements to him in that behalf as they had made and caused to be made to said superintendent of the insurance department of Missouri, as hereinbefore set forth; and said directors and officers made and caused to be made frequent statements and representations to the public through the public press and otherwise to the effect that said assets belonged to said company, and that they were of the value aforesaid, and by reason of the ownership and possession of the said assets by said company as aforesaid, and by reason of the said statements and representations of said officers and directors of said company in that behalf, said company acquired and maintained an extensive credit, amounting in the aggregate to over five hundred thousand dollars ($500,000.00), and was enabled to carry on and continue its business, and to induce its policy holders to continue their policies in force, under which policies losses have since occurred, and which still remain unpaid, and have been proved against the
9 estate of said insurance company in bankruptcy to an amount exceeding five hundred thousand dollars ($500,000.00), as aforesaid, which amount the assets of said estate, including the assets hereinbefore described, are entirely inadequate to pay and satisfy.

Yet your orator further shows that notwithstanding the premises, the said directors and officers, unmindful of their duty aforesaid, but intending to cheat and defraud the said insurance company and its creditors aforesaid, prevailed upon and procured the said treasurer to unite and co-operate with them, as in fact he did unite and co-operate with them, in parcelling out and distributing the said notes and bonds among themselves and their friends at some time prior to the 19th day of June, 1873, wholly without consideration whatever and in gross disregard of their duty as such directors and officers of said company, and thereby and through the neglect of duty, and through the fraud and breach of trust of the said officers and directors of said company, the said bonds and notes became and were wholly lost to the said company and its creditors, and to your orator as assignee aforesaid.

Your orator therefore prays that an account may be taken of the notes and bonds so as aforesaid misappropriated by the said officers and directors of said company; that a decree may be rendered against the

said sureties on the said official bond of said treasurer for said sum of one hundred thousand dollars ($100,000.00), and against the said directors and officers of the said company for the said sum of one hundred and thirty-six thousand one hundred and ninety-five dollars and forty cents ($136,195 40/100), the aggregate value of said notes and bonds, and for such other and further relief as to the court shall seem meet and proper.

May it please your honor to grant unto your orator the most gracious writ of subpœna of the United States of America to be directed
10 to the said Joseph F. Reister, John F. Williams, William Forbes, George P. Glaze, John M. London, Philip T. Holman, Isaac Hays, James B. Melone, Alfred L. Shortridge, Web. M. Rubey, Benjamin R. Dysart, Richard A. Melone, Henry S. Glaze, Eli C. D. Shortridge, Charles G. Epperson, and Albert Larrabee, thereby commanding them, and each of them, at a certain day and under a certain pain therein to be specified, personally to be and appear before your honor in this honorable court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein as to your honor shall seem meet, and your orator will ever pray, &c.

WILL'M R. WALKER.
Assignee.

NATHANIEL MYERS,
Of Counsel.

And afterwards, to wit, in vacation, the following further proceedings took place in this case on Monday, the 4th day of January, A. D. 1875, to wit:

Order for s'p'a in chancery.

WILLAM R. WALKER, ASSIGNEE, &C., COMplainant,
ag'st
JOSEPH T. REISTER ET AL., DEFENDANTS. } In equity.

This day comes again the said complainant, by Nathaniel Myers, esquire, his solicitor, and on motion of said solicitor it is ordered that a subpœna in chancery be issued in this cause against the said defendants, commanding them, and each of them, to enter their appearance and answer said bill of complaint herein on or before Tuesday, the nineteenth day of January next, 1875.

And thereupon, on the 5th day of January, A. D. 1875, there was issued out of the clerk's office of the district court of the United States for the eastern district of Missouri a subpœna and duplicate subpœna in chancery in this cause. And the said subpœna in chancery so issued is in the words and figures following, to wit:

Subpœna in chancery.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

11 The President of the United States of America to Joseph T. Reister, John F. Williams, William Forbes, George P. Glaze, John M. London, Philip T. Holman, Isaac Hays, James B. Melone, Alfred L. Shortridge, Web. M. Rubey, Benjamin R. Dysart, Richard A. Melone, Henry S. Glaze, Eli C. D. Shortridge, Charles G. Epperson, and Albert Larrabee, greeting:

You are hereby commanded to be and appear before the district court

of the United States of America in and for the eastern district of Missouri, at its rooms in the custom house building, in the city of Saint Louis, in said eastern district, on Tuesday, the 19th day of January, A. D. eighteen hundred and seventy-five, then and there to enter your appearance and answer the bill of complaint of William R. Walker, assignee in bankruptcy of the North Missouri Insurance Co., bankrupt, filed in this court on the 31st day of December, A. D. 1874, otherwise your failure to enter your appearance and answer said bill of complaint on or before said 19th day of January the said bill may be taken as confessed. Hereof fail not.

Witness the honorable Samuel Treat, judge of the district court of said United States in and for the eastern district of Missouri, this 5th day of January, in the year of our Lord eighteen hundred and seventy-five. Issued at office in the city of Saint Louis, in said district, under the seal of said district court, the day and year last above written.

[SEAL] JOSEPH H. CLARK,
Clerk of said Court.

And the said duplicate subpœna in chancery so issued is in the words and figures following, to wit:

Duplicate subpœna in chancery.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

The President of the United States of America to Joseph T. Reister, John F. Williams, William Forbes, George P. Glaze, John M. Loudon, Philip T. Holman, Isaac Hays, James B. Melone, Alfred L.
12 Shortridge, Web. M. Rubey, Benjamin R. Dysart, Richard A. Melone, Henry S. Glaze, Eli C. D. Shortridge, Charles G. Epperson, and Albert Larrabee, greeting:

You are hereby commanded to be and appear at and before the district court of the United States of America, in and for the eastern district of Missouri, at its rooms in the custom-house building, in the city of Saint Louis, in said eastern district, on Tuesday, the 19th day of January, A. D. eighteen hundred and seventy-five, then and there to enter your appearance and answer the bill of complaint of William R. Walker, assignee in bankruptcy of North Missouri Insurance Co., bankrupt, filed in this court on the 31st day of December, A. D. 1874, otherwise, upon failure to enter your appearance and answer said bill of complaint on or before said 19th day of January, the said bill may be taken as confessed. Hereof fail not.

Witness the honorable Samuel Treat, judge of the district court of said United States in and for the eastern district of Missouri, this 5th day of January, in the year of our Lord eighteen hundred and seventy-five.

Issued at office in the city of Saint Louis, in said district, under the seal of said district court, the day and year last above written.

[SEAL.] JOSEPH H. CLARK,
Clerk of said Court.

And afterwards, to wit, at a regular stated term of the district court of the United States, begun and holden in the city of St Louis, in said district, on the first Monday, the 2nd day of November, A. D. 1874, the following further proceedings took place in this case on Monday, the 18th day of January, A. D. 1875, to wit:

WILLIAM R. WALKER, ASSIGNEE, &C., COMPLAINANT, *ag'st* JOSEPH T. REISTER ET AL., DEFENDANTS. } In equity.

On the application of Web. M. Rubey, one of the defendants in this cause, it is ordered that the said defendant have further time until and including the second day of February next (1875), within which to file his answer in said case.

Bill dismissed as to Forbes and Larrabee.

On the application of Nathaniel Myers, esquire, solicitor for complainant, it is ordered that the bill of complaint in this cause
13 be, and the same is hereby, now dismissed as to the defendants William Forbes and Albert Larrabee.

And afterwards, to wit, on the 19th day of January, A. D. 1875, the marshal returned into court the subpœna and duplicate subpœna in chancery heretofore issued in this cause.

And the said marshal's return on the subpœna in chancery heretofore issued in this cause is in the words and figures following:

Marshal's return.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I return this writ not executed for the reason that the within named Joseph T. Reister, John F. Williams, William Forbes, George P. Glaze, John M. Loudon, Philip T. Holman, Isaac Hays, James B. Melone, Alfred L. Shortridge, Web. M. Rubey, Benjamin R. Dysert. Richard R. Melone, Henry S. Glaze, Eli C. D. Shortridge, Charles G. Epperson, and Albert Larrabee could not be found within the eastern district of Missouri.

C. A. NEWCOMB,
U. S. Marshal, E. D. Mo.,
By C. F. NEWCOMB,
Deputy.

And the said marshal's return on the duplicate subpœna in chancery is in the words and figures following, to wit:

Return to duplicate writ.

I hereby certify that I executed the within writ by delivering a copy of the petition and writ to John F. Williams, the first served, and delivering a copy of writ to Geo. P. Glaze, H. S. Glaze, Jno. M. Loudon, Phil. T. Holman, Isaac Hays, Jas. B. Malone, Richard A. Malone, Alfred L. Shortridge, Eli C. D. Shortridge, Benjamin R. Dysert, and Chas. G. Epperson. All done in Macon County, western district of Missouri, this 11th day of January, A. D. 1875. Web. M. Rubey, J. F. Reister, and Wm. Forbes not found in Macon County, Mo.

GEORGE SMITH,
U. S. Marshal, Western District of Missouri,
By C. B. HAVERLY,
Deputy.

I hereby certify that I executed this writ by delivering to the within named Web. M. Rubey a true copy of the within summons at the city of Jefferson, in the western district of Missouri, on the 13th day of January, A. D. 1875.

GEO. SMITH,
U. S. Marshal,
By S. O. TENNEY,
Deputy.

14 And afterwards, to wit, at last mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this case, on Thursday, the 21st day of January, A. D. 1875, to wit:

Order for alias writ.

WILLIAM R. WALKER, ASSIGNEE, &C., COMplainant,
vs.
JOSEPH T. REISTER ET AL., DEFENDANTS. } In equity.

This day comes the said complainant by Nathaniel Myers, esquire, his solicitor, and on motion of said solicitor it is ordered that an alias subpœna in chancery be issued in this cause against the defendant, Joseph T. Reister, commanding him to enter his appearance and answer said bill of complaint herein on or before Tuesday, the sixteenth day of February next (1875).

Further time to answer.

On the further motion of said solicitor it is also ordered that further time be given to all the defendants served with process herein until and including the sixteenth day of February next (1875), within which to file their answers in this cause.

And thereupon, on the 27th day of January, A. D. 1875, there was issued out of the clerk's office of the district court of the United States for the eastern district of Missouri an alias subpœna in chancery in this cause against Joseph T. Reister, one of the defendants in this cause, which said alias subpœna in chancery is in the words and figures following, to wit:

Alias s'p'a in chancery.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

The President of the United States of America to Joseph T. Reister, John F. Williams, William Forbes, George P. Glaze, John M. Loudon, Philip T. Holman, Isaac Hays, James B. Melone, Alfred L. Shortridge, Web. M. Rubey, Benjamin R. Dysart, Richard A. Malone, Henry S. Glaze, Eli C. D. Shortridge, Charles G. Epperson, and Albert Larrabee, greeting:

You are hereby again commanded to be and appear at and before the district court of the United States of America in and for the eastern district of Missouri, at its rooms in the custom house building in
15 the city of Saint Louis, in said eastern district, on Tuesday, the

16th day of February, A. D. eighteen hundred and seventy-five, then and there to enter your appearance and answer the bill of complaint of William R. Walker, assignee in bankruptcy of North Missouri Insurance Company, bankrupt, filed in this court on the 31st day of December, A. D. 1874, otherwise, upon failure to enter your appearance and answer said bill of complaint on or before said 16th day of February, the said bill may be taken as confessed. Hereof fail not.

Witness the honorable Samuel Treat, judge of the district court of said United States in and for the eastern district of Missouri, this 27th day of January, in the year of our Lord eighteen hundred and seventy-five.

Issued at office in the city of Saint Louis, in said district, under the seal of said district court, the day and year last above written.

[SEAL.] JOSEPH H. CLARK,
Clerk of said Court.

And afterwards, to wit, at last mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this case, on Tuesday, the 9th day of February, A. D. 1875, to wit:

Further time to plead.

WILLIAM R. WALKER, ASSIGNEE, &C., COMplainant, *ag'st* JOSEPH T. REISTER ET AL., DEFENDANTS. } In equity.

This day comes the said complainant, by his solicitor, and files a stipulation in writing granting to defendants further time until Monday, March 1st, 1875, to plead in this cause.

And the said stipulation so filed is in the words and figures following, to wit:

Stipulation as to pleadings.

U. S. dist. court, east. dist. Mo., in bankruptcy. In equity.

W. R. WALKER, PLAINTIFF, *vs.* JOS. T. REISTER ET AL., DEF'TS.

It is hereby stipulated by the parties in the above entitled cause that further time, until Monday, March 1st, 1875, be granted defendants to plead.

NATHANIEL MYERS,
Sol'r for Complainant.

16 And afterwards, to wit, on the 16th day of February, A. D. 1875, the marshal of the United States returned into court the alias subpœna in chancery heretofore issued in this cause, with said marshal's return thereon, which said marshal's return is in the words and figures following, to wit:

Marshal's return to alias writ.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I return this writ not executed for the reason that the within named Joseph T. Reister could not be found within the eastern district of Missouri.

C. A. NEWCOMB,
U. S. Marshal, E. D. Mo.,
By C. F. NEWCOMB,
Deputy.

And afterwards, to wit, at last mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this case on Saturday the 27th day of February, A. D. 1875, to wit:

WILLIAM R. WALKER, ASSIGNEE, &C., COMplainant,
ag'st
JOSEPH T. REISTER ET AL., DEFENDANTS. } In equity.

This day come the defendants, John F. Williams, George P. Glaze, John M. Loudon, Philip T. Holman, Isaac T. Hays, James B. Melone, Alfred L. Shortridge, Web M. Rubey, Benjamin R. Dysart, Richard A. Melone, Henry S. Glaze, Eli C. D. Shortridge, and Charles G. Epperson, by Messrs. Sharp and Broadhead and Edmund T. Allen, their solicitors, and with the leave of court file their exceptions to parts of the bill of complaint heretofore filed in this cause.

And the said exceptions so filed is in the words and figures following, to wit:

Exceptions to part of bill.

United States district court, eastern district of Missouri. In bankruptcy.

WILLIAM R. WALKER, ASSIGNEE,
vs.
JOSEPH T. REISTER ET ALS. } In chancery.

And now come John F. Williams, George P. Glaze, John M. Loudon, Philip T. Holman, Isaac Hays, James B. Melone, Alfred L. Shortridge, Web M. Rubey, Benjamin R. Dysart, Richard A. Melone,
17 Henry S. Glaze, Eli C. D. Shortridge, and Charles G. Epperson, defendants in the above-entitled cause, by their counsel, and file their exceptions to so much of the plaintiff's bill as alleges what, under the laws of the state of Missouri, was the duty of the president, or vice-president and secretary, or majority of the directors, of an insurance company as to preparation of annual statements; and what, under said laws, was the duty of the superintendant of the insurance department of the State of Missouri as to requiring special statements of the affairs of insurance companies and making personal examinations; and what statement the directors of the North Missouri Insurance Company caused to be prepared in pursuance of the laws aforesaid, and what such statement

contained; and what action the superintendent of the insurance department of Missouri took in the premises, as to a personal examination of the affairs of said company, and what representations said directors and officers made or caused to be made to such superintendent as to certain assets and securities in said bill mentioned, and the value thereof; and what said directors and officers caused to be exhibited to said superintendent and to the superintendent of the insurance department of the State of Ohio, and represented to said last-named superintendent; and what statements and representations said directors and officers made and caused to be made to the public, through the public press and otherwise, relating to the assets named in said bill and the value thereof; and what credit said company acquired and maintained by reason of such statements and representations, and was thereby enabled to do as to continuing its business and inducing policy-holders to continue policies in force under which losses have since occurred, which still remain unpaid and which have been proved against said insurance company in bankruptcy; and what is the present condition of the assets of
18 said company, as compared with said indebtedness; including within their said exceptions all that part of plaintiff's bill beginning with the words, "And your orator further shows that by the laws of the State of Missouri then in force," &c., and ending with the words, "are entirely inadequate to pay and satisfy."

And these defendants except to that part of plaintiff's bill above particularly indicated, because the matters therein stated are impertinent and not relevant to the suit, and should be expunged from said bill, as provided by the twenty-sixth rule of practice for the courts of equity of the United States.

SHARP & BROADHEAD & E. T. ALLEN,
Of Counsel for above-named Defendants.

And afterwards, to wit, at last-mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this cause, on Monday, the 1st day of March, A. D. 1875, to wit:

Order for pluries subpœna.

WILLIAM R. WALKER, ASSIGNEE, &C., COMplainant, *ag'st* JOSEPH T. REISTER ET ALS., DEFENDANTS.	In equity.

This day comes the said complainant, in his own proper person, and on his motion it is ordered that a pluries subpœna in chancery be issued in this cause against the defendant Joseph T. Reister, commanding him to enter his appearance and answer the said bill of complaint herein on or before Wednesday, the tenth day of this month of March, 1875.

And thereupon, on said 1st day of March in said last-mentioned year, there was issued out of the clerk's office of the district court of the United States for the eastern district of Missouri a pluries subpœna in chancery in this cause, which said pluries subpœna is in the words and figures following, to wit:

Pluries writ.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

The President of the United States of America to Joseph T. Reister, John F. William, William Forbes, George P. Glaze, John M.
19 Loudon, Philip T. Holman, Isaac Hays, James B. Melone, Alfred L. Shortridge, Web M. Rubey, Benjamin R. Dysart, Richard A. Melone, Henry S. Glaze, Eli C. D. Shortridge, Charles G. Epperson, and Albert Larrabee, greeting:

You are hereby again commanded to be and appear at and before the district court of the United States of America in and for the eastern district of Missouri, at its rooms in the custom-house building, in the city of Saint Louis, in said eastern district, on Wednesday, the tenth day of March, A. D. eighteen hundred and seventy-five, then and there to enter your appearance and answer the bill of complaint of William R. Walker, assignee in bankruptcy of the North Missouri Insurance Company, bankrupt, complainant, filed in this court on the 31st day of December, A. D. 1874. Otherwise, upon failure to enter your appearance and answer said bill of complaint on or before said tenth day of March, the said bill may be taken as confessed. Hereof fail not.

Witness the honorable Samuel Treat, judge of the district court of said United States in and for the eastern district of Missouri, this first day of March, in the year of our Lord eighteen hundred and seventy-five. Issued at office in the city of Saint Louis, in said district, under the seal of said district court, the day and year last above written.

[SEAL.] JOSEPH H. CLARK,
Clerk of said Court.

And afterwards, to wit, at last-mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this case on Thursday, the 14th day of March, A. D. 1875, to wit:

Hearing exceptions.

WILLIAM R. WALKER, ASSIGNEE, &C., COMplainant, *ag'st* JOSEPH T. REISTER ET AL., DEFENDANTS. } In equity.

This day came the parties, by their respective solicitors, and the exceptions heretofore filed by the defendants, John F. Williams, George P. Glaze, John M. Loudon, Philip T. Holman, Isaac Hays, James B. Melone, Alfred L. Shortridge, Web M. Rubey, Benjamin R. Dy-
20 sart, Richard A. Melone, Henry S. Glaze, Eli C. D. Shortridge, and Charles G. Epperson, to the bill of complaint herein having been taken up, the same are argued by counsel and submitted to the court; and the court, not being fully advised of and concerning the premises, takes further time within which to consider of its judgment therein.

And afterwards, to wit, at last-mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this cause, on Saturday, the 6th day of March, A. D. 1875, to wit:

Exceptions overruled.

WILLIAM R. WALKER, ASSIGNEE, &C., COMplainant,
ag'st
JOSEPH T. REISTER ET AL., DEFENDANTS. } In equity.

This day come again the parties, by their respective solicitors, and the court having examined the exceptions heretofore filed by the defendants, John F. Williams, George P. Glaze, John M. Loudon, Philip T. Holman, Isaac Hays, James B. Melone, Alfred L. Shortridge, Web M. Rubey, Benjamin R. Dysart, Richard A. Melone, Henry S. Glaze, Eli C. D. Shortridge, and Charles G. Epperson, to the bill of complaint in this cause, and, being fully advised of and concerning the same, now orders that the said exceptions be and the same are hereby overruled.

And on the motion of Edmund T. Allen, esquire, solicitor for said defendants, it is ordered that said defendants have further time, until and including Saturday next, the 13th day of this month of March, within which to file their answers in this cause.

And afterwards, to wit, on the 10th day of March, A. D. 1875, the marshal of the Untted States for the eastern district of Missouri returned into court the pluries subpœna in chancery heretofore issued in this cause, with said marshal's return thereon, which said marshal's return is in the words and figures following, to wit:

Return to pluries writ.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Executed this writ by delivering a copy of subpœna in chancery to the within-named Joseph T. Reister, at St. Louis, within the
21 eastern district of Missouri, March 4th, 1875.

C. A. NEWCOMB,
U. S. Marshal, E. D. Mo.,
By WM. H. BIERSTADT,
Deputy.

And afterwards, to wit, at last mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this case on Saturday, the 20th day of March, A. D. 1875, to wit:

Answers filed.

WILLIAM R. WALKER, ASSIGNEE, &C., COMplainant,
ag'st
JOSEPH T. REISTER ET AL., DEFENDANTS. } In equity.

This day come the parties by their respective solicitors, and by consent of said solicitors the defendants, Joseph T. Reister, John F. Williams, George P. Glaze, John M. Loudon, Philip T. Holman, Isaac Hays, and James B. Melone, by Messrs. Sharp and Broadhead and Edmund T. Allen, esquire, file their joint and several answer to the bill of complaint herein, nunc pro tunc, as of Saturday, the 13th day of March,

A. D. 1875, with leave to defendant Reister to hereafter verify the said answer; and by like consent the defendants Alfred L. Shortridge, Web M. Rubey, Benjamin R. Dysart, Richard A. Malone, Henry S. Glaze, Eli C. D. Shortridge, and Charles G. Epperson, by Messrs. Sharp and Broadhead, their solicitors, file their joint and several answer to the bill of complaint herein, nunc pro tunc, as of Saturday, the 13th day of March, A. D. 1875, with leave to defendant Rubey to hereafter verify the said last-mentioned answer.

Replies filed.

And thereupon the said complainant, by Nathaniel Myers, esquire, his solicitor, files his separate replications to the said separate answers of the said Joseph T. Reister et al. and Alfred S. Shortridge et al. so filed herein.

And the said joint and several answer of said Joseph T. Reister et al., so filed as aforesaid, is in the words and figures following, to wit:

Answer.

United States district court, eastern district of Missouri. In bankruptcy.

WILLIAM R. WALKER, ASSIGNEE,
vs.
JOSEPH T. REISTER ET AL. } In equity.

22 The joint and several answer of Joseph T. Reister, John F. Williams, George P. Glaze, John M. London, Philip T. Holman, Isaac Hays, and James B. Melone to the bill of complaint of William R. Walker, assignee.

These defendants respectively now and at all times hereafter saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering, say:

We believe it to be true that the North Missouri Insurance Company was incorporated at the time and carried on business as alleged in said bill; that said insurance company was duly adjudicated a bankrupt, and plaintiff became and is the duly appointed assignee in bankruptcy of said insurance company, and as such assignee entitled to all the property of said company of which it was possessed, or in which it was interested, or entitled to have on the second day of October, 1873, as alleged in said bill, but we do not know, nor have we knowledge or information thereof sufficient to form a belief, whether said Eaton, as register, by any instrument conveyed or assigned to plaintiff the estate of said bankrupt as alleged in said bill, and we deny that said Eaton so assigned any of the notes or bonds as alleged in said bill; and we deny that said company was possessed of, interested in, or entitled to have any of the notes and bonds described in said bill, as averred. We believe it to be true that the business of said company, so far as relates to the organization of its board of directors and the election of its officers before it was declared bankrupt, was managed as alleged in said

bill, and that these defendants, together with William Forbes and Albert Larrabee, were on the first Monday of July, 1872, duly elected, and thereafter duly qualified as directors of said company, and continued steadily to act as such directors until about the 13th day of June,
23 1873, but no longer, when their successors were elected and qualified, but we deny that there were any breaches of trust as alleged. We admit that said directors elected defendant John F. Williams president, one Albert Larrabee secretary, one William Forbes vice-president, and defendant James B. Melone treasurer of said company, each and all of whom accepted the said offices respectively, and continued to discharge the functions thereof during the period between the month of July, 1872, and the 13th day of June, 1873, but not longer.

For further answer we say that it was not, as alleged in said bill, the duty of said treasurer faithfully to keep and account for such of the moneys and securities of said company as should be from time to time in his custody as such treasurer, and to give bond to the said company in the sum of one hundred thousand dollars to secure the faithful performance by him of his duties as such treasurer; but we aver the facts to be that it was the duty of said treasurer to receive from the secretary all moneys belonging to the company, to receipt therefor, and disburse the same on orders drawn on him and signed by the president and countersigned by the secretary of the company, and to pay over to his successor in office any balance which might at the time remain in his hands, and to give security for double the amount of money that he might at any time have in his hands belonging to the company, if required so to do by the board of directors, which were the only duties of said treasurer; and I, the said Melone, especially deny that I or any sureties as alleged executed or delivered to said insurance company any bond in the sum of one hundred thousand dollars, or any sum, or conditioned for the faithful performance or discharge by me of any such duties as averred in said bill, but I, the said Melone, admit that an incomplete paper in blank, a copy of which is filed with the answer herein of said alleged sureties, was signed by me and said alleged sureties, and I submit that the same was not and is not a bond to said insurance company, and is not and does not purport to be conditioned
24 as averred in said bill, but only for the proper discharge of my duties as aforesaid as such treasurer.

Further answering, upon information and belief, we deny that during the time as stated in said bill, or when these defendants were directors of said company, the said company owned or possessed any bonds of Schuyler County, Missouri, to the par value of seventy-five thousand dollars, or any amount, or of the real market value of sixty-three thousand seven hundred and fifty dollars, or any sum; or any number of the bonds of Macon County, Missouri, of the par value of thirty-one thousand five hundred dollars, or any sum, or of the real market value of twenty-six thousand seven hundred and seventy-five dollars, or any sum; or any bonds of the Burlington and Southwestern Railroad Company of the par value of thirteen thousand dollars, or any sum, or of the market value of eleven thousand and fifty dollars, or any sum; or any bonds of Knox County, Missouri, of the par value of eight thousand five hundred dollars, or any sum, or of the market value of seventy-two hundred and twenty-five dollars, or any other amount; or any Normal School bonds of Adair County, Missouri, of the par value of three hundred and fifty dollars, or any amount, or of the actual value of two hundred and ninety-five & $\frac{40}{100}$ dollars, or any sum; or any Ma-

sonic bond of the value of one hundred dollars, or any sum; or any promissory note made by William E. Moberly for twenty-seven thousand dollars; or any note made by said Moberly for thirteen thousand five hundred dollars, or any value, as alleged, or of any value whatever. We are informed and believe, and therefore charge the fact to be, that during the time as stated, and while we were directors or officers of said insurance company, said company did not own, and was not entitled to, or lawfully possessed of any such bonds or notes as mentioned or charged in said bill, or of any value, as charged.

Further answering, we, the said Reister, Williams, Glaze, Loudon, Holman, and Hays, on information and belief, and I, the said Melone, of my own knowledge, deny that the bonds or notes above named, or any of them, came into the possession or custody of said Melone as treasurer of said company during the said term for which he held the said office of treasurer, or at any other time, or remained in the possession or custody of said Melone as such treasurer until they were disposed of as stated in said bill, and deny that during the term above stated, or at any time, said bonds or notes or any of them were under the control of these defendants or any of them as the directors of said company.

Further answering, we admit that the laws of the State of Missouri, then in force relating to Fire and Marine Insurance Companies, to have been substantially as stated in plaintiff's bill, with regard to the duty of the president or vice-president, and secretary, or a majority of the directors of insurance companies, and in regard to the duty and power of the superintendent of the insurance department of the State of Missiouri.

Further answering, we say it is not true as alleged in said bill, and we expressly deny, that on or about the first day of January, 1873, the directors of said insurance company, in pursuance of any duty imposed upon them by law, or otherwise, caused to be prepared under oath, or to be deposited in the office of the superintendent of the insurance department of Missouri, a statement made up for the last preceding fiscal year of said company; or that, among other assets belonging to said company, as set forth in any such statement, were set out any such bonds of Macon County, as averred, or of Schuyler County, Missouri, or any such notes of said Moberly; and we deny that in or by any such statement, any such bonds or notes were by said directors or officers represented as being of any value, as stated; and we deny that any such statements or representations were made or caused to be made by said directors or officers; but we, the said Reister, Glaze Loudon, Holman, Hays and Melone, on subsequent information and belief, and I, the said Williams, of my personal knowledge, aver the fact to be, that on or about the first day of February, 1873, a statement purporting to be a statement of the condition and affairs of said company, was prepared and made by said Larabee, secretary of said company and which was filed with the superintendent of the insurance department of Missouri, but the directors of said company did not make, or have any knowledge of the making of, such statement, or the contents thereof, or authorize or sanction the same.

And further answering, we, and each of us, of his personal knowledge, as to himself, on information and belief as to each other, aver, that having full faith and confidence in the ability and integrity of the said Albert Larrabee, the secretary of said company, and his subordinates in the office of said company, and having had no reason whatever to suspect either his or their honesty or capacity, we gave but little atten-

tion to the management of the affairs of said company, so far as such management pertained to the care and custody of the property, assets, bonds, and notes of said company, or of what such assets, bonds, or notes consisted, or of the number and value thereof, except so far as the same were reported and represented to us by said Larrabee: that our several occupations and want of knowledge of the insurance business, and the complicated character of the affairs of said company, rendered it impossible, had it ever occurred to us to be necessary, to verify, if correct, or to detect the inaccuracies, if any, of any statements of assets prepared or made out by said Larrabee, who took and had the control and management of the routine business and affairs of said company. That said statement, as these defendants, except said Williams, have since been informed and believe, and as the said Williams, of his knowledge, avers, was made out by said Larrabee without the knowledge or
27 consent of any of these defendants, except that said Williams knew thereof when it was presented to him to be signed, and that, although the same was signed by said Williams with said Larrabee, it was upon the statement, representations, and assurance to him by said Larrabee that the same was true and correct, and upon which said Williams relied and confided; that said statement was made and written out without the knowledge of either or any of these defendants, and was presented to said Williams at his business office by said Larrabee, with the request that he should sign the same as president, it having the signature of said Larrabee as secretary attached thereto; that said Williams did not read, or know the contents, or any of the contents, or statements thereof, but, being much engaged at the time, inquired of said Larrabee if the same was correct, and upon being assured by said Larrabee that the same was entirely true and correct, relying solely upon such assurance, signed the same, and his affidavit, together with that of said Larrabee, was taken thereto; and said Williams avers and states that he did not know what statements, or any of them, were contained therein until after this suit was commenced, or that any such bonds or notes as mentioned in said bill, or any of them, were named in said statement, as claimed or represented to be owned by said company, but that said statement was signed hurriedly by him without reading, or hearing the same read, solely on the assurances aforesaid; and we, the other of these defendants, answering herein, aver and state that we had, nor had either of us, any knowledge of or participations in the making or rendering of any such statement.

Further answering, we state that we are now informed and believe that in said statement it is claimed and pretended that said company owned or held said bonds of Macon and Schuyler Counties, and
28 said notes of Moberly, which claims and pretenses these defendants are informed and believe, and therefore aver, were and are not true.

Further answering, we say that we do not know and cannot state whether the superintendent of the insurance department of Missouri, in the month of May, or at any other time, made a personal examination of the affairs of said company, *be* we expressly deny that we, or either of us, represented or caused to be represented to him that said company then owned or possessed, among other things, either said bonds of Macon and Schuyler Counties, or said notes of said Moberly, or said bonds of Knox or Adair Counties, or said Burlington and Southwestern Railroad Company, or said Masonic bond, or that each or all of the same were of the real values in said bill set forth; or that these defendants, or either of us, exhibited or caused to be exhibited any such assets, or any assets

whatever, to the said superintendent or to the superintendent of the insurance department of the State of Ohio, or made or caused to be made any representations or statements whatever as to the assets of said company to the superintendent last named; or that we, or either of us, as directors or officers of said company or otherwise, made or caused to be made frequent or any statement and representations to the public, through the public press or otherwise, to the effect that the assets named in said bill, or any of them, belonged to said company, or that they were of the value stated in said bill, or of any value whatever.

And further answering, we say it is not true that by reason of any ownership or possession as alleged, or of any statements and representations made by these defendants as officers or directors of said company, as to the ownership and possession by said company of the assets named in said bill, said company acquired or maintained an extensive credit, amounting in the aggregate to over five hundred thousand dol-
29 lars, or any other sum; or was enabled to carry on and continue its business, or to induce its policy-holders to continue their policies in force, under which policies losses have since occurred, and which still remain unpaid, or which have been proved against the estate of said company in bankruptcy to an amount exceeding five hundred thousand dollars, or any other sum; or that by or through any act or neglect of these defendants, or either of them, the assets of said company are inadequate, if such be the fact, to pay and satisfy the demands alleged by said bill to have been proved against it.

And further answering, we say it is not true, as alleged in said bill, that we or either of us, or any other of the directors or officers of said company, unmindful of their duty or intending to cheat and defraud said insurance company or its creditors, prevailed upon or procured the said treasurer to unite or co-operate with him or them, and we deny that he, the said treasurer, did unite or co-operate with any one or more of said directors in parcelling out or distributing the said notes or bonds or any of them among said directors or any of them, or their friends or any of them, at any time, whether prior or subsequent to the nineteenth day of June, 1873, or either with or without consideration, or in disregard of our duty as such directors or officers of said company; and we deny that by any conduct charged in said bill, or by any neglect of duty, or fraud, or breach of trust of these defendants or either of us, the said bonds or notes, or any bonds or notes whatever, became or were wholly lost to the said company or its creditors, or to plaintiff as assignee.

Further answering, we say that we have recently been informed, but do not know and cannot aver the truth thereof, that in some of its transactions, of the details of which we have not nor has either of us
30 any information, said company did acquire a small amount of bonds of Macon County, Missouri, of the par value of from nine to ten thousand dollars, but we aver that these were no part of the bonds mentioned in said bill, and that if said company ever owned and possessed any such bonds there was no misappropriation of the same or any of them while these defendants were officers or directors of said company.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are, or either of them is, by the said bill charged, without this that there is any other matter, cause, or thing in plaintiff's said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants or either of them; all which matters and things these defendants are ready

and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOHN F. WILLIAMS.
ISAAC HAYS.
PHILIP T. HOLMAN.
JAS. B. MELONE.
GEORGE P. GLAZE.
JNO. M. LOUDON.
JOSEPH T. REISTER.

SHARP & BROADHEAD & EDMUND T. ALLEN,
Counsel for Def'ts.

WESTERN DISTRICT OF MISSOURI,
County of Macon:

On this 13th day of March, A. D. 1875, personally appeared the above named John F. Williams, Isaac Hays, Philip T. Holman, James B. Melone, George P. Glaze, and John M. Loudon, who, being by me first severally sworn, did depose and say, each for himself, that he had read the foregoing answer and knew the contents thereof, and that
31 said answer is true except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

AUSTIN N. McGINDLEY,
United States Commissioner Western District of Missouri.

UNITED STATES OF AMERICA,
Eastern District of Missouri, sct:

Joseph T. Reister, being duly sworn, on oath states that the foregoing answer and the matters therein stated as of his own knowledge are true, and so far as they are stated on information and belief he believes them to be true.

JOSEPH T. REISTER.

Subscribed and sworn to by said affiant, Joseph T. Reister, before me, at office in St. Louis, Missouri, this 6th day of April, A. D. 1875.

F. A. WERNER,
Commissioner U. S. Circuit Court, Eastern District of Missouri.

ST. LOUIS, *Mar.* 17, 1875.

It is hereby stipulated that the within answer may be filed as of March 13th, defendant Reister having leave to hereafter verify same.

NATH'L MYERS,
For Complainant.

And the said joint and several answer of said Alfred L. Shortridge et al., so filed as aforesaid, is in the words and figures following, to wit:

Joint answer of A. L. Shortridge et al.

United States district court, eastern district of Missouri. In bankruptcy.

WILLIAM R. WALKER, ASSIGNEE, *vs.* JOSEPH T. REISTER ET AL. } In equity.

The joint and several answer of Alfred L. Shortridge, Web. M. Rubey, Benjamin R. Dysart, Richard A. Melone, Henry S. Glaze, Eli C. D. Shortridge, and Charles G. Epperson, seven of the defendants, to the bill of complaint of William R. Walker, assignee in bankruptcy of the North Missouri Insurance Company.

These defendants, reserving to themselves all right of exceptions to said bill of plaintiff, for answer thereto say that they have been informed and believe it to be true that the North Missouri Insurance Com-
32 pany was duly incorporated and carried on the business of fire & marine insurance and was adjudged a bankrupt and plaintiff appointed its assignee, as alleged in said bill; but these defendants further say that they or any or either of them do not know and have never been informed, save by the said plaintiff's bill, and cannot set forth as to their belief or otherwise, whether among other things the notes and bonds described in plaintiff's bill of complaint were conveyed and assigned to plaintiff, as alleged in said bill. And these defendants say that they have been informed and believe it to be true that the business of said insurance company, before it was declared bankrupt, was managed, controlled, and directed as alleged in said bill, until about the 13th day of June, 1873, but not thereafter; that the directors elected on the first Monday of July, 1872, were as named in said bill, and that said parties accepted such office and qualified as such directors and continued so to act until the 13th day of June, 1873, but not longer, and that said directors elected as officers of said company the persons named in said bill, all of whom accepted said offices and continued to discharge the functions thereof until about the 13th day of June, 1873, but not thereafter.

These defendants, further answering, say it is not true that it was the duty of the treasurer of said company faithfully to keep & account for such of the moneys and securities of said company as should be from time to time in his custody as such, and it is not true that it was his duty to give bond to the said company in the sum of one hundred thousand dollars to secure the faithful performance by him of his duties as such treasurer; but these defendants believe it to be true that it was the duty of the treasurer to receive and account for all the moneys of the company, and to give security for double the amount of any money he at any time had in his hands belonging to the company, if required so to do by the board of directors.

And these defendants, further answering, say it is not true that
33 defendant James B. Melone as principal, and these defendants as sureties, executed and delivered to said insurance company their bond of date January 18th, 1873, signed and sealed by them respectively, in the sum of one hundred thousand dollars, conditioned for the faithful performance and discharge by the said Melone of the duties of his office of treasurer, as alleged in said bill, for the year beginning July 1st, 1872, and ending July 1st, 1873; but these defendants state that

they with the said James B. Melone, on said 18th day of January, 1873, signed and sealed an incomplete and imperfect paper-writing, a copy whereof is hereto annexed and marked Exhibit A, but deny that they executed or delivered any bond to said company, as alleged.

And these defendants further severally say that they or any or either of them do not know, and have never been informed, save by the said complainant's bill, & cannot set forth as to their belief or otherwise, whether during the time defendants Williams, Forbes, Melone, Glaze, Reister, Loudon, Holman, and Hays were directors, the said company owned and possessed, among other things, a large number or any bonds of Schuyler County, Mo., of the par and market value named in said bill, or of any value whatever; or a large number or any of the bonds of Macon County, Missouri, of the par and market value named in said bill or of any value whatever; or a large number or any of the bonds of the Burlington & Southwestern R. R. Co., of the par or market value named in said bill, or of any value whatever; or a large number or any of the bonds of Knox County, Mo., of the par or market value named in said bill, or of any value whatever; or alot of normal school bonds of Adair County, Mo., of the par or actual value named in said bill, or of any value whatever; or of one masonic bond of the par or real value named in said bill, or of any value whatever; or of the promissory notes named in said bill or either of them, or whether either of said promissory notes was secured as alleged in said bill. or whether any such notes were of the value of twenty-seven thousand dollars, or any other sum; or whether the bonds and notes named in said bill were of the
34 total real value of one hundred & thirty six thousand one hundred & ninety-five & $\frac{40}{100}$ dollars, or any other sum.

And for further answer to said bill these defendants, upon information and belief, say it is not true that said bonds or notes, or any or either of them, ever came into the possession and custody of said Melone as treasurer of said company during the term for which he held the said office of treasurer, or that the same, or either of them, remained in the possession or custody of said Melone as such treasurer, as alleged in said bill; and as to whether said bonds & notes, or any or either of them, were ever at any time under the control of said directors of said company, these defendants further say that they or any or either of them do not know, and have never been informed, save by said plaintiff's bill, and cannot set forth as to their belief or otherwise.

And for further answer, these defendants say, upon information and belief, that the laws of the State of Missouri, as to fire & marine insurance companies, and the duties of officers of insurance companies, and of the superintendent of the insurance department of the State of Missouri, are substantially as alleged in said bill, but as to whether on or about the first day of January, 1873, or at any other time, the directors or officers of said North Missouri Insurance Company, in pursuance of the duty imposed upon them by law, or otherwise, caused to be prepared under oath, and to be deposited in the office of the superintendent of the insurance department of Missouri, a statement made up for the last preceding fiscal year of said company, as required by said laws of Missouri, and as to what any such statement may have contained; or whether in the month of May, 1873, the superintendent of the insurance department of Missouri made a personal examination of the affairs of said company; or what, if anything, the directors and officers
35 of said company then and there represented, or caused to be represented or exhibited, or caused to be exhibited to said superintendent, or to the superintendent of the insurance department of the

State of Ohio, or whether the directors and officers of said company made or caused to be made frequent or any statements and representations to the public through the public press or otherwise, or what any such statements and representations contained; or whether by reason of any such alleged statements and representations of such officers and directors of said company said company acquired and maintained an extensive credit, amounting in the aggregate to over five hundred thousand dollars, or any other sum, and was enabled to carry on and continue its business and to induce its policy-holders to continue their policies in force; or whether under any such policies losses have since occurred and still remain unpaid, and have been proved against the estate of said insurance company in bankruptcy to an amount exceeding five hundred thousand dollars, or any amount; or whether the assets of said insurance co. are inadequate to pay the demands so alleged to have been proved, these defendants say that they, or any or either of them, do not know and have never been informed, save by said plaintiff's bill, and cannot set forth as to their belief or otherwise.

And these defendants, further answering, say upon information and belief that it is not true, as alleged in said bill, that said directors and officers, unmindful of their duty, but intending to cheat and defraud the said insurance company and its creditors, prevailed upon or procured the said treasurer of said company to unite or co-operate with them, or that said treasurer did unite or co-operate with them, in parcelling out or distributing the said notes or bonds among themselves or their friends at any time prior or since the 19th day of June, 1873, with or without consideration or in disregard of their duty as such directors and offi-
36 cers of said company, or that by any neglect of duty or fraud & breach of trust on the part of said officers and directors of said company, said bonds or notes or other property of said company became and were wholly lost to the said company and its creditors or to plaintiff as assignee of said company. And these defendants submit to this honorable court that all and every the matters in plaintiff's bill mentioned and complained of are matters which, so far as the same concern these defendants or any or either of them, may be tried and determined at law, and with respect to which the said plaintiff is not entitled to any relief from a court of equity; and these defendants hope they shall have the same benefit of this defence as if they had demurred to said bill.

And these defendants deny all & all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this that there is any other matter, cause, or thing, in plaintiff's bill contained, material or necessary for these defendants, or either of them, to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoid' or denied, is true to the knowledge or belief of these defendants or either of them; all which matters and things these defendants are ready and willing to aver, maintain & prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained, &c.

H. S. GLAZE.
B. R. DYSART.
A. L. SHORTRIDGE.
R. A. MELONE.
CHAS. G. EPPERSON.
ELI C. D. SHORTRIDGE.
WEB M. RUBEY.

SHARP & BROADHEAD & EDMUND T. ALLEN,
Of Counsel for Def'ts.

WESTERN DISTRICT OF MISSOURI,
County of Macon :

37 On the 13th day of March, A. D. 1875, personally appeared the above-named H. S. Glaze, B. R. Dysart, A. L. Shortridge, R. A. Melone, Charles G. Epperson, and Eli C. D. Shortridge, who being by me first severally duly sworn, did depose and say, each for himself, that he had read the foregoing answer, and knew the contents thereof, and that said answer is true, except as to those matters therein stated on information and belief, and as those matters he believes it to be true.

AUSTIN N. McGINDLEY,
United States Commissioner, Western District of Missouri.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

On this thirteenth day of April, A. D. eighteen hundred and seventy-five, personally appeared Web M. Rubey, one of the above-named defendants, who, being by me first duly sworn, did depose and say that he has read the foregoing answer, and knew the contents thereof, and that said answer is true, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

F. A. WERNER,
Commissioner U. S. Circuit Court, Eastern District of Missouri.

EXHIBIT A.

Know all men by these presents that we, James B. Melone, as principal, and A. L. Shortridge, B. R. Dysart, Web M. Rubey, H. S. Glaze, E. C. D. Shortridge and C. G. Epperson, as his sureties, acknowledge themselves indebted to in the sum of one hundred thousand dollars, for the payment of which they bind themselves, their executors and administrators, upon the condition following:

Whereas the said James B. Melone has been duly elected treasurer of the North Missouri Insurance Company, of Macon, Mo., for the year beginning July 1st, 1872, and ending July 1st, 1873: Now if said Melone shall well and faithfully discharge the duties of said office, and pay or account for all monies by him received, then this bond to
38 be void, otherwise to remain in full force. In witness whereof the parties hereto subscribe their names, and affix their seals, Jan'y 18th, 1873.

(Signed)

JAS. B. MELONE.	[SEAL.]
A. L. SHORTRIDGE.	[SEAL.]
WEB M. RUBEY.	[SEAL.]
B. R. DYSART.	[SEAL.]
R. A. MELONE.	[SEAL.]
H. S. GLAZE.	[SEAL.]
E. C. D. SHORTRIDGE.	[SEAL.]
C. G. EPPERSON.	[SEAL.]

ST. LOUIS, *Mar.* 17, 1875.

It is hereby stipulated that the within answer may be filed as of March 13th, defendant Ruby having leave to hereafter verify same.

NATH'L MYERS,
For Complainant.

And the said replication of said William R. Walker, assignee, &c., complainant, to the joint and several answer of said Joseph T. Reister, et al., so filed, is in the words and figures following, to wit:

Reply to joint ans. of Reister et al.

In the U. S. dist. court, east. dist. of Mo. In equity.

WILLIAM R. WALKER, ASSIGNEE, &C., }
vs.
JOSEPH T. REISTER ET AL. }

The replication of William R. Walker, assignee, &c., complainant, to the joint and several answer of Joseph T. Reister, John F. Williams, George P. Glaze, John M. Loudon, Philip T. Holman, Isaac Hays, and James B. Melone, respondents.

This repliant, saving & reserving unto himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver, maintain, and prove his said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied to by this repliant. Without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law, to be replied
39 unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

NATH'L MYERS,
Sol'r for Compl'nt.

And the said replication of said William R. Walker, assignee, &c., complainant, to the joint and several answer of said Alfred L. Shortridge et al., so filed, is in the words and figures following, to wit:

Reply to answer of Shortridge et al.

In the U. S. dist. court, east. dist. of Mo. In equity,

WILLIAM R. WALKER, ASSIGNEE, &C., }
vs.
JOSEPH T. REISTER ET AL. }

The replication of Wm. R. Walker, assignee, &c., complainant, to the joint and several answer of Alfred L. Shortridge, Web M. Rubey, Benjamin R. Dysart, Richard A. Melone, Henry S. Glaze, Eli C. D. Shortridge, and Charles G. Epperson, respondents.

This repliant, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver, maintain, and prove his said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendants

is uncertain, untrue, and insufficient to be replied unto by this repliant. Without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

NATH'L MYERS,
Sol'r for Compl'nt.

40 And afterwards, to wit, at a regular stated term of the district court of the United States for the eastern district of Missouri, begun and holden at the city of St. Louis, in said district, on the first Monday, the 6th of November, A. D. 1876, the following further proceedings took place in this case on Friday the 16th day of February, A. D. 1877, to wit:

Hearing cause in part.

WILLIAM R. WALKER, ASSIGNEE, &C., COMplainant,
ag'st
JOSEPH T. REISTER ET AL., DEFENDANTS. } In equity.

This day comes the said complainant, by Nathaniel Myers, esquire, his solicitor, and also come the defendants herein, by Messrs. Broadhead, Overall and Broadhead, and Edmund T. Allen and Albert Blair, esquires, their solicitors, and this cause having been regularly set down for hearing on this day, the same is thereupon in part heard upon the pleadings and proofs therein, but the hearing thereof not being concluded at the hour of adjournment, it is ordered that further proceedings herein be continued until to-morrow morning.

And afterwards, to wit, at last mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this case on Saturday, the 17th day of February, A. D. 1877, to wit:

Further hearing.

WILLIAM R. WALKER, ASSIGNEE, &C., COMplainant,
ag'st
JOSEPH T. REISTER ET AL., DEFENDANTS. } In equity.

This day come again the parties, by their respective solicitors, and the hearing of this cause having been resumed, the said cause is thereupon further heard, upon the pleadings and proofs therein, and at the close of the testimony on behalf of the said complainant, and on the motion of Albert Blair and Edmund T. Allen, esquires, solicitors for defendants, it is ordered that this cause be and the same is hereby now dismissed as to the defendants Alfred L. Shortridge, Web M. Rubey, Benjamin R. Dysart, Richard A. Melone, Henry S. Glaze, Eli C. D. Shortridge, and Charles G. Epperson.

41 And thereupon the hearing of the testimony herein was re-

sumed, and the hearing thereof being concluded, it is ordered that further proceedings herein be now continued until Monday morning next.

And afterwards, to wit, at last mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this case, on Monday, the 19th day of February, A. D. 1877, to wit:

WILLIAM R. WALKER, ASSIGNEE, COMPLAINANT, *ag'st* JOSEPH T. REISTER ET AL., DEFENDANTS. } In equity.

This day come again the parties, by their respective attorneys, and the hearing of this cause having been resumed, and the testimony herein having been heard and concluded, the arguments of counsel were in part heard, but the hearing thereof not being concluded at the hour of adjournment, it is ordered that further proceedings herein be continued until to-morrow morning.

And afterwards, to wit, at last mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this case on Tuesday, the 20th day of February, A. D. 1877, to wit:

Cause submitted.

WILLIAM R. WALKER, ASSIGNEE, &C., COMPLAINANT, *ag'st* JOSEPH T. REISTER ET AL., DEFENDANTS. } In equity.

This day come again the parties, by their respective solicitors, and the hearing of this cause having been again resumed, and the arguments of counsel having been further heard, and said arguments having been concluded, said cause is thereupon submitted to the court, and the court not being fully advised in the premises, took further time to consider of its judgment therein.

And afterwards, to wit, at last mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this case on Friday the 23rd day of February, A. D. 1877, to wit:

42 *Decree.*

WILLIAM R. WALKER, ASSIGNEE, &C., COMPLAINANT, *ag'st* JOSEPH T. REISTER ET AL., DEFENDANTS. } In equity.

This day come again the parties herein, by their respective solicitors, and this cause coming on to be heard at the present term of this court, the same was heard and argued by counsel; and thereupon, on consideration thereof, and being fully advised of and concerning the premises, it was by the court ordered, adjudged, and decreed that the bill of com-

plaint in this cause be, and the same is hereby, now dismissed, and that the said plaintiff, William R. Walker, assignee in bankruptcy, of the North Missouri Insurance Company, pay the costs of said cause to be taxed.

Appeal allowed.

And thereupon, on motion of Nathaniel Myers, esquire, solicitor for said complainant, it is ordered that an appeal of this cause from this court to the circuit court of the United States in and for the eastern district of Missouri be, and the same is hereby, allowed the said complainant in said cause. And it is further ordered by the court that the said complainant execute and file a bond for costs on such appeal herein in the sum of one thousand dollars.

And afterwards, to wit, at last mentioned regular stated term of said district court, begun and holden as aforesaid, the following further proceedings took place in this case on *the* Tuesday, the 27th day of February, A. D. 1877, to wit:

WILLIAM R. WALKER, ASSIGNEE, &C., COMplainant,
vs.
JOSEPH T. REISLER ET AL, DEFENDANTS. } In equity.

This day comes William R. Walker, assignee of the North Missouri Insurance Company, the complainant herein, and files and presents to the court his bond for costs on appeal in this cause, as such assignee, in the sum of one thousand dollars. And upon consideration thereof, the court thereupon approves the bond of said assignee herein, and orders that a transcript of the record and proceedings in said
43 cause be made out and certified, and transmitted to the circuit court of said United States in and for the eastern district of Missouri, at the next regular stated term thereof, to be begun and holden on the third Monday of March next (1877).

And the said bonds for cost on appeal, so filed as aforesaid, is in the words and figures following, to wit:

Bond for costs, &c.

Know all men by these presents, that I, William R. Walker, assignee in bankruptcy of the North Missouri Insurance Company, *are* held and firmly bound unto Joseph T. Reister, John F. Williams, Geo. P. Glaze, John M. Loudon, Philip T. Holman, Isaac Hay, James B. Malone, Alfred L. Shortridge, Web M. Rubey, Benjamin R. Dysart, Richard A. Malone, Henry S. Glaze, Eli C. D. Shortridge, and Charles G. Epperson, in the full and just sum of one thousand dollars, to be paid to the said Joseph T. Reister and others, defendants above named, their heirs, executors, administrators, or assigns, to which payment, well and truly to be paid, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this day of February, in the year of our Lord one thousand eight hundred and seventy-seven.

Whereas lately, at the November term, A. D. 1876, of the district court of the United States for the eastern district of Missouri, in a suit depending in said court between William R. Walker, assignee of

North Missouri Insurance Company, bankrupt, plaintiff, and Joseph T. Reister et al., defendants, judgment was rendered against the said plaintiff (the bill of complaint in said cause having been dismissed at the costs of said plaintiff), and the said plaintiff having been allowed an appeal to the circuit court of the United States in and for the eastern district of Missouri, in said cause above mentioned:

Now the condition of the above obligation is such, that if the said plaintiff, William R. Walker, assignee as aforesaid, shall prosecute said appeal to effect and answer all damages and costs if he fail to make good such appeal, then the above obligation to be void, else to remain in full force and virtue.

[SEAL.] WILLIAM R. WALKER,
Assignee.

Approved by—

SAMUEL TREAT, *Judge.*

44 In the district court of the United States for the eastern district of Missouri. In bankruptcy.

In the matter of the North Missouri Insurance Co., bankrupt.

AT ST. LOUIS, IN SAID DISTRICT,
Saturday, 8th November, A. D. 1873.

This day came, by their respective attorneys, Thomas C. Chubb and John Valentine, who have heretofore filed their separate petitions for adjudication of bankruptcy against the said North Missouri Insurance Company, and which petitions were consolidated by order of the court, this day made, and also comes the said company by its said attorneys; and thereupon said company, by its said attorneys, withdraws the answer and demand for jury heretofore filed to each of said petitions, and Messrs. Davis, Thoroughman & Warren, of counsel for said company, with the leave of court, withdrew their names as attorneys of record for said company, and thereupon said company, not asking further to plead or answer to the aforesaid petition, makes default. Whereupon, and upon consideration of said petition, and of the proofs sustaining the allegations thereof, and the court being fully advised of and concerning the premises, it was found that the facts set forth in said petition were true, and it is therefore adjudged that said North Missouri Insurance Company became bankrupt within the true intent and meaning of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, before the filing of said petition, and it is therefore declared and adjudged bankrupt accordingly.

And it is ordered that said bankrupt shall, within five days after the date of this order, make and deliver, or transmit by mail, post paid, to the marshal of said district, as messenger, a schedule of its creditors and an inventory of its estate in the form, and verified in the manner required of the petitioning debtor by said act. It is further ordered that said bankrupt attend before Lucien Eaton, esquire, one of the registers in bankruptcy of this court, at his office, No. 203 Pine street,
45 St. Louis, district aforesaid, on Friday, the fourteenth day of November, A. D. 1873, at eleven o'clock a. m. of that day, and thenceforth as said register may direct, to submit to such orders as may be made by said register, or by his court, relating to said bankruptcy, and

this case is hereby referred to said register to take such further proceedings therein as are by law required.

And it is further ordered that the marshal report his proceedings under this order to said register on or before said 14th day of November, A. D. 1873, at eleven o'clock a. m., and thereupon the first meeting of creditors shall be held on a day to be set therefor by said register at his office.

Witness the honorable Samuel Treat, judge of the said court, and the seal thereof, at St. Louis, in said district, on the 8th day of November, A. D. eighteen hundred and seventy-three.

[L. S.] JOSEPH H. CLARK,
Clerk of the District Court for said District.

Assignment of bankrupt's effects.

In the district court of the United States for the eastern district of Missouri, in bankruptcy.

In the matter of North Missouri Insurance Company, bankrupt, before Lucien Eaton, register in bankruptcy.

EASTERN DISTRICT OF MISSOURI, *ss*:

Know all men by these presents, that William R. Walker, of Saint Louis, in the county of Saint Louis, and State of Missouri, has been duly appointed assignee in said matter.

Now, therefore, I, Lucien Eaton, register in bankruptcy of said district, by virtue of the authority vested in me by the 14th section of an act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, there being no opposing interest, do hereby convey and assign to said William R. Walker, assignee as aforesaid, all the estate, real and personal, of the said North Missouri Insurance Company, bankrupt aforesaid, including all the property of whatever kind of which it was pos-
46 sessed, or in which it was interested or entitled to have, on the second day of October, 1873, with all its deeds, books, and papers relating thereto, excepting such property as is exempted from the operations of this assignment by the provisions of said 14th section of said act. To have and to hold all the foregoing premises to the said William R. Walker and his heirs forever; in trust, nevertheless, for the use and purposes, with the powers, and subject to the conditions and limitations, set forth in said act.

In witness whereof, I, the said register, have hereunto set my hand, and caused the seal of said court to be affixed this 23rd day of March, 1874.

[SEAL.] LUCIEN EATON,
Register in Bankruptcy.

Albert Larrabee.

The deposition of Albert Larrabee, taken before George Brown, a notary public in and for the county of St. Louis and State of Missouri, on the thirteenth day of September, A. D. eighteen hundred and seventy-five.

And the said ALBERT LARRABEE, being about the age of forty-four years, and having been by me first cautioned and sworn to testify the

truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, was examined, and he did thereupon depose, testify, and say as follows:

Examined by Mr. MYERS:

1st. Int. Please state your age, residence, and occupation.

Ans. Age, 44 years; residence, Chicago, Illinois; occupation, insurance business.

2d. Int. When did you first become connected with the North Missouri Insurance Company?

Ans. At its organization, in 1867.

3rd. Int. For how long did your connection with it continue?

Ans. During the lifetime of the company, to its failure.

4th. Int. Until it was declared bankrupt?

Ans. Yes, sir.

5th. Int. In what capacity were you connected with it?

Ans. I was secretary.

6th. Int. During what time; to what time?

Ans. From its organization until it went into bankruptcy.

7th. Int. Where did it have its main office?

47 Ans. At Macon, Missouri, until the summer of 1873, and then in St. Louis, Mo.

8th. Int. Do you know who were the last set of directors of the Co. up to the 19th day of June, 1873?

Ans. I do.

9th. Int. Can you name them without reference to the minute book?

Ans. I think so.

10th. Int. Please do so.

Ans. I could not state as to date; I do not know the date at which the old board or the Macon board went out and the new one took its place.

11th. Int. Can you tell by reference to the minutes?

Ans. I think I could.

12th. Int. Or by reference to the resignation of the directors sued in this suit?

Ans. They didn't all go out at the same time; I think two or three held over until the annual election.

13th. Int. Tell me when Mr. Reister resigned by reference to the paper I now hand you. (Paper marked "Exhibit No. 1, G. B.," shown to witness and herewith attached.)

Ans. June 21st, 1873.

13½. Int. By reference to the paper I now hand you ("Exhibit No. 2, G. B."), can you tell me when Mr. Glaze resigned?

Ans. June 21st, 1873.

13¾. Int. By reference to the paper I now hand you ("Exhibit No. 3, G. B.," herewith attached), can you tell me when Mr. Loudon resigned?

Ans. June 20th, 1873; accepted June 21st, 1873.

14th. Int. By reference to paper I now hand you (marked Exhibit No. 4, G. B., herewith attached, can you tell me when Mr. Holman resigned?

Ans. It was made on the 20th, and accepted on the 21st.

15th. Int. By reference to the paper I now hand you, (marked Exhibit No. 5, G. B., herewith attached), can you tell me when Mr. Melone resigned.

Ans. It was made on the 20th of June and accepted on the 21st.

16th. Int. By reference to the paper I now hand you (marked Exhibit

No. 6. G. B., herewith attached), can you tell me when Mr. Hays resigned?

Ans. The resignation was made on the 20th of June, 1873.

17th. Int. In respect to Mr. Williams, for how long did he continue a director?

Ans. I think he continued until the first Monday in July following—the time of the annual election, July, 1873.

48 18th. Int. From what time had these various parties served as directors of that company?

Ans. From July, 1872.

19th. Int. During that period, from July, 1872, until the period of resignation spoken of, who was president?

Ans. Col Williams.

20th. Int. Who was secretary?

Ans. I was secretary.

21st. Int. Who was treasurer?

Ans. J. B. Melone.

22d. Int. How frequently were meetings of the board of directors held during that period?

Ans. Usually once a month; sometimes oftener.

23rd. Int. Do you know whether the meetings were pretty generally attended by the member'?

Ans. They were.

24th. Int. In whose custody were the various assets of the company kept during that period?

Ans. Principally in mine.

25th. Int. Who else had the custody of any of the assets?

Ans. They were held by different parties under the direction of the board. Mr. Melone held securities of the company at times—perhaps all the time had some.

26th. Int. In what capacity did he hold them.

Ans. I do not know that it was ever defined; I do not remember anything ever being said about it.

27th. Int. Who else besides yourself & Mr. Melone had the custody of any of these assets?

Ans. There was a real estate committee, which at times held some of the securities of the company.

28th. Int. Who composed that committee?

Ans. Well, that committee may have been changed during the year; but I remember one or two.

29th. Int. Name them.

Ans. Mr. Reister was a member, & Mr. Holman.

30th. Int. Who else?

Ans. I am not certain, nor am I certain that they were on the real estate committee for that year, 1873. They have acted in that capacity, I remember.

31st. Int. Of what assets did the real estate committee have the custody?

Ans. There were times when by direction of the board they would have possession or would have access to all of them, or nearly so; there were times when they would have only a few for a special purpose; that occurred frequently; they were liable to be changed at these meetings of the board.

49 32d. Int. Of what assets did Mr. Melone have the custody?

Ans. He had custody of the bonds of the company.

33d. Int. Can you tell me what bonds he had custody of?

Ans. I cannot enumerate them. I think he had the custody of all the bonds of the company.

34th. Int. Enumerate them as far as you can.

Ans. I think all the bonds represented in that statement were in his custody & possession—in the statement of company made January, 1873.

35th. Int. Could you enumerate them by reference to that statement?

Ans. I could.

36th. Int. Have you got a copy of that statement?

Ans. I have not.

37th. Int. I will ask you, not having a copy of this statement of January, 1873, by me at present, whether among the assets so in Mr. Melone's custody, were any Schuyler County bonds?

Ans. There were.

38th. Int. And, if so, what amount?

Ans. My recollection of the amount is $75,000.

39th. Int. Were these bonds of Schuyler County, Missouri?

Ans. They were.

40th. Int. Do you know how long they remained in his custody?

Ans. I do not, sir.

41st. Int. Do you know whether there were any bonds of Macon County, Missouri, so in the custody of Mr. Melone during that period?

Ans. I am not certain that he had possession of those bonds. I know he had possession of some Macon County bonds, but I cannot state as to all of them.

42d. Int. Do you remember how many Macon County bonds the company possessed?

Ans. I think it was about $40,000.

43rd. Int. You say you know Mr. Melone had the custody of some of them?

Ans. I do.

44th. Int. Do you remember about how many he had the custody of?

Ans. Those about which there is a question whether he had possession of them or not—these were about $29,000; they were known to be in the possession of Mr. Rubey, and they were together. They were in the bank together.

45th. Int. Who were in the bank together?

Ans. Mr. Melone and Mr. Rubey.

46th. Int. You have not spoken of any bank before. What bank do you mean?

Ans. The bank of Melone & Epperson, Macon, Mo.

47th. Int. How many do you say there is a question about?

Ans. There is a question of the possession of $29,000.

48th. Int. How? Who had the custody of the excess over that $29,000?

Ans. Mr. Melone.

49th. Int. How much was that excess?

Ans. I do not remember the amount, sir; it would be ten thousand or upwards, I suppose.

50th. Int. What became of that excess?

Ans. I think they were finally left with the Bank of North America as collateral for a loan made with them.

By Mr. ALLEN. Made by whom?

Ans. By the company.

51st. Int. By Mr. MYERS. And were still with the Bank of North America, were they not, when the company was declared bankrupt?

Ans. They were, sir.

52d. Int. Now, as to the amount of about $29,000, what director of the company or what officer of the company had the custody of them?

Ans. I cannot say that any one had, to my knowledge. I do not remember that any one had.

53rd. Int. Did you ever have their custody?

Ans. I did have, sir, at one time, not in interest of the North Missouri Insurance Company, but as a member of the directory of a railroad company, to whom they then belonged; that is the only capacity in which I had possession of them.

54th. Int. When was that?

Ans. I think I had possession of them about two years.

55th. Int. From when to when?

Ans. I cannot give you dates exactly. I think I delivered them over some time in the fall of 1872.

56th. Int. Delivered them to whom?

Ans. Delivered them through another party to Mr. Rubey; not directly to him.

57th. Int. Who was that other party?

Ans. I think it was Mr. Howe. He was in the employ of the company at that time.

58th. Int. What company?

Ans. The North Missouri Insurance Co.

59th. Int. In what capacity?

Ans. As one of its bookkeepers.

60th. Int. Did you ever see them in the possession of James B.
51 Melone at any time?

Ans. I did.

61st. Int. When was that?

Ans. At the time of the examination of Mr. Church.

62d. Int. Who was Mr. Church?

Ans. Insurance commissioner of Ohio.

63d. Int. Where did Mr. Melone have these Macon County bonds at that time, and in what connection?

Ans. At his bank; they were delivered with the other bonds to Mr. Church.

64th. Int. With what other bonds?

Ans. The other bonds of the company.

65th. Int. Who delivered them?

Ans. I think Mr. Melone brought them into the room, where were Mr. Church and myself.

66th. Int. What room was that?

Ans. It was a room adjoining the office of the bank.

67th. Int. Who were present at that time?

Ans. Commissioner Church, a man with him by the name of Whitney, & myself.

68th. Int. For how long were you together?

Ans. I suppose about two hours.

69th. Int. What bonds were produced there?

Ans. I cannot enumerate them, but they were all the bonds of the company.

70th. Int. Were these Schuyler County bonds among them?

Ans. They were.

71st. Int. The whole $75,000?

Ans. They were.

72d. Int. The same you have referred to?

Ans. They were.

73d. Int. Were the Macon County bonds of the amount of about $29,000 that you referred to among them?

Ans. They were.

74th. Int. Was not the amount $31,500 of Macon County bonds?

Ans. I do not recollect distinctly. I am of the impression it was $29,000.

75th. Int. Was it the amount represented in the statement of January 1st, 1873, that you have referred to, less what was actually pledged with the Bank of North America?

Ans. No; I cannot say it was that, but it would be something near it.

76th. Int. Were there any bonds of the Burlington & Southwestern R. R. Company among them?

Ans. There was.

77th. Int. Do you know what amount?

Ans. I think it was $13,000; I will not be certain.

78th. Int. Who had the custody of them?

Ans. They were with Mr. Melone with the other bonds.

52 79th. Int. Were they delivered by him to Mr. Church?

Ans. I think they were.

80th. Int. Are you clear in your recollection in regard to it?

Ans. There is nothing by which I could specially recollect those bonds, but they were all together, I know that.

81st. Int. Do you remember whether there were any bonds of Knox County, Missouri, among them?

Ans. There were.

82d. Int. What amount?

Ans. I cannot recollect.

83d. Int. About what amount?

Ans. I would guess at it when I give you an answer. I suppose about 5 or $6,000.

83. Int. Could you tell by reference to the annual statement of January 1st, 1873?

Ans. No, sir; they would not all appear in that statement.

84th. Int. Did any of them appear in that statement, do you know?

Ans. I do not recollect whether they did or not.

85th. Int. Who had the custody of those bonds?

Ans. They were altogether, sir, with Mr. Melone.

86th. Int. Were they all kept in one package?

Ans. I cannot say; they were all brought in the room at one time.

87th. Int. You do not remember whether they were all in one package at that time?

Ans. I do not think I noticed, sir, the order of the bonds, how they were arranged.

88th. Int. You are now referring to the time they were exhibited and delivered to Mr. Church?

Ans. I am.

89th. Int. When was that?

Ans. It was about the 25th of May, 1873; I cannot be certain as to dates.

90th. Int. Do you remember whether Mr. Melone had the custody of any normal school bonds of Adair County, Missouri, of the company?

Ans. I do not recollect, sir, as to them. I think he did.

91st. Int. Have you any recollection as to the amount?

Ans. The amount was small. I do not remember, sir. It was less than $1,000, I think.

92d. Int. Was it $350?
Ans. I think it was.
93d. Int.
Ans. Masonic bond of $100. I remember that; it was with them.
94th. Int. Do you know who had the custody of a note of William E. Moberly of the sum of $27,000, bearing a credit of $13,500?
53 Ans. That was in the office of the company.
95th. Int. In whose custody?
Ans. I cannot say that any one connected with the company was personally entrusted with the keeping of it; it was as much mine probably as that of any one.
96th. Int. Whereabouts was it kept?
Ans. It was kept in the safe of the company.
97th. Int. Along with the other papers of the company?
Ans. It was.
98th. Int. Was that note secured by a deed of trust?
Ans. One of them was.
99th. Int. Was that $27,000 note secured by a deed of trust?
Ans. One-half of the amount was.
100th. Int. Was there a note for $13,500?
Ans. There was.
101st. Int. Also executed by Mr. Moberly?
Ans. Yes, sir.
102d. Int. In whose custody?
Ans. The officers of the company.
103d. Int. The same as the $27,000?
Ans. It was.
104th. Int. Were those notes ever in the possession of Mr. Melone?
Ans. I do not know they ever were.
105th. Int. The $13,500 note was secured by a deed of trust?
Ans. It was.
106th. Int. Who held the deed of trust?
Ans. I cannot say.
107th. Int. Who had the possession of it?
Ans. I cannot state positively. It may have been delivered at different times to some of the committee of the board, but it was generally in the custody of the officers of the company.
108th. Int. Was it generally kept with the notes you have mentioned?
Ans. It was, and the other deeds of trust.
109th. Int. Can you describe those notes, or either of them?
Ans. My recollection of them is this: That they were given some time in the month of December, 1872; first given in one note for $27,000, afterwards, a second note of $13,500 was given and made a credit on the $27,000. A deed of trust was given in security for the payment of one, and some stock collaterals of the company given as security for the other.
110th. Int. How long had the $27,000 note to run?
Ans. I don't remember the time.
111th. Int. To whose order was it payable?
54 Ans. I think it was payable to the company.
112th. Int. To whose order was the note of $13,500 payable?
Ans. To the same, I think.
113th. Int. When was that executed?
Ans. About the same time.
114th. Int. Do you remember how long it had to run?
Ans. I do not.

115th. Int. Can you approximate the time of payment of either of them?

Ans. There is nothing by which I can recollect. I suppose it to be, suppose them both to be, for one year. It was usual to take deeds of trust for that time.

116th. Int. Do you remember whether the notes, or either of them, bore any endorsements?

Ans. The note as originally given for $27,000 bore the endorsement of the second note, one half of its amount.

117th Int. That is a credit?

Ans. A credit for the amount of the second note.

118th & 119th. Int. Did it bear any other endorsement?

Ans. Not that I remember.

120th. Int. Did the note of $13,500 bear any endorsement?

Ans. Not that I remember.

121st. Int. Do you remember what rate of interest they bore?

Ans. I do not.

122d. Int. Or whether they bore interest from date or maturity?

Ans. I could not state.

123d. Do you remember where they were payable, if at any particular place?

Ans. I do not remember they were made payable at any particular place.

124th. Int. Do you remember the locality of the real estate described in the deed of trust?

Ans. It was in Livingston County, Missouri, near Chillicothe.

125th. Int. Was it simply one tract of lands?

Ans. I think it was all connected; it was suburban property.

126th. Int. Do you remember how many acres were covered by the deeds?

Ans. I do not, sir.

127th. Int. Do you remember who was trustee in that deed?

Ans. I do not.

128th. Int. Do you remember whether the property was improved?

55 Ans. I do not know of my own knowledge. I was told it had improvements.

129th. Int. Do you remember whether any improvements that may have been on that land were insured; and, if so, who held the policy?

Ans. I think the improvements consisted in cultivation, fencing, and side-walking, and not in buildings.

130th. Int. When did you last have those notes in your possession?

Ans. About the time of the examination made by Mr. Church in May, 1873.

131st. Int. Were they exhibited to Mr. Church?

Ans. They were, I think, at Macon.

132d. Int. Whereabouts at Macon?

Ans. At the office of the company.

133d. Int. Who were present at the time?

Ans. I cannot say that any one was, except it was Mr. Langdeau, who was, I think, present nearly all the time. The examination was made principally in the room he occupied; I think so.

134th. Int. Was any one present?

Ans. I do not remember.

135th. Int. Can you state the circumstances under which Mr. Church came to Macon to examine into the affairs of the company?

Ans. No, sir; I never knew. I think it was the practice to examine all companies admitted to his State.

136th. Int. Were you at Macon when he arrived?

Ans. I was not.

137th. Int. How soon after his arrival did you reach Macon?

Ans. It was about the time of his arrival. I cannot say whether it was before or after.

138th. Int. How long was he in Macon?

Ans. About one week.

139th. Int. During that week, was he engaged in anything else than the investigation of the North Missouri Insurance Company?

Ans. Not that I have any knowledge of.

140th. Int. Where did he spend most of his time during that week?

Ans. In office hours, he spent it in the office of the North Missouri Insurance Company.

141st. Int. Were you present at only one interview with him at which Mr. Melone was present?

Ans. Only one, I think.

142d. Int. Were you present at any interview at which any other director of the company was present, any interview with Mr. Melone?

56 Ans. Not that I remember.

143d. Int. Was there exhibited to Mr. Church all the assets of the company?

Ans. To give a technical description of the securities of the company, they were not.

144th. Int. Were all the bonds of the company?

Ans. There were second liens or second deeds of trust that were not delivered or exhibited to Mr. Church, the reason for not showing them——

(Counsel for defendant objected.)

145th. Int. Mr. MYERS. You may state reasons so far as they grow out of conversations between you and any other director; that is to say, you may state any conversation you had with any director in that regard.

Ans. I do not recall to mind any conversation I held with any member of the directory with reference to that or other matters pertaining to the examination.

146th. Int. Can you give the substance of anything either of them said on the subject?

Ans. There was no meeting of the board during that time that I have any recollection of.

147th. Int. That is not an answer to my question. I asked you whether you could remember the substance of anything said to you by any member of the directory in that regard, and whether it was at a board meeting or otherwise is immaterial.

Mr. BROWN. In regard to what?

148th. Int. Mr. MYERS. In regard to the non-production of second mortgages.

Ans. I do not think there was any conversation in regard to it.

149th. Int. Do you remember whether Mr. Church saw Mr. Williams in connection with that examination?

Ans. I think they met together and made each other's acquaintance. I do not know anything about conversations or interviews they might have had.

150th. Int. Do you know whether Mr. Williams was present at any time when any of these assets were exhibited to Mr. Church, or were in Mr. Church's possession?

Ans. I do not know he was. He was in the office every day, perhaps, but not in company with Mr. Church.

151st. Int. What was he doing in the office?

Ans. It was his custom to visit the office almost daily when at home.

57 152d. Int. Was he at home at that time?

Ans. I think he was, sir. I know he was some portion of the time, probably all.

153d. Int. How great a portion of the day was he accustomed to spend in the office of the company?

Ans. Very little.

154th. Int. How much did he spend during that time?

Ans. I do not know he visited the office except to give his signature as it might be wanted, and he usually stepped in for that purpose every day, or nearly so.

155th. Int. Was he a regular attendant at the board meetings?

Ans. Pretty generally he was.

156th. Int. Do you know whether he was cognizant of the affairs of the company?

Ans. In general terms, I think so, not specifically; he did not give it his attention exclusively.

157th. Int. Was any written list of assets, a written schedule or inventory of assets, made out by or for Mr. Church?

Ans. There was not. Mr. Church came to the office without notice; there was no preparation made for him.

158th. Int. Was none made out while he was there?

Ans. I think there was perhaps during his stay there.

159th. Int. By whom?

Ans. I cannot very well particularize. I know there were securities arranged for, but by whom I could not state.

160th. Int. The question, Mr. Larrabee, was, by whom any written inventory or schedule of assets was made out?

Ans. There was none made.

161st. Int. I understood you to say you thought one was made while Mr. Church was in Macon?

Ans. No, that was not what I intended to say; it was not what I had reference to.

162d. Int. What did you intend to say?

Ans. The statement that was prepared was for Mr. Selby, insurance commissioner of this State, but it never was used with Mr. Church, never was shown to Mr. Church.

163d. Int. To whom was it shown?

Ans. Shown to Mr. Selby.

164th. Int. Who prepared that?

Ans. It was prepared by Mr. Langdeau chiefly, perhaps wholly.

58 165th. Int. By whom else?

Ans. I do not know there was any one. I do not call to mind any one who took part in the preparation of it.

166th. Int. Who furnished Mr. Langdeau the data from which he prepared the inventory?

Ans. Mr. Langdeau was in possession of it. He was the custodian of the office where they were kept, and he had the schedules and papers themselves, and knew what they were; Mr. Langdeau had previously made one annual statement. He was conversant with the affairs of the company.

167th. Int. What office did he hold?

Ans. None designated, no official position.

168th. Int. What position did he hold?

Ans. He superintended the adjustment of losses.

169th. Int. Was Mr. Selby in Macon at the same time Mr. Church was?

Ans. He was.

170th. Int. Who was Mr. Selby?

Ans. He was at that time commissioner for Missouri.

171st. Int. Of the insurance department?

Ans. Insurance department.

172d. Int. How long was he in Macon at that time?

Ans. Well, two or three days. He waived an examination of the company, and returned afterwards.

173d. Int. Did he return before Mr. Church had left?

Ans. I do not remember about the time.

174th. Int. How long did he stay when he returned?

Ans. As well as I can recollect, three or four days.

175th. Int. Was it in May that he returned?

Ans. It was, I feel quite sure; I am not certain.

176th. Int. Do you know whether there was any consultation among any of the gentlemen on the directory of the insurance company at that time, either in their capacity as directors or as individuals simply, touching the examination by Mr. Church or by Mr. Selby?

Ans. I think there was a meeting of the board immediately after the examination of Mr. Church, and before the examination of Mr. Selby was concluded. It was after the result of Mr. Church's examination had been known.

177th. Int. What was that result?

59 Ans. It showed an impairment of the company's——

178th. Int. Assets?

Ans. Assets.

179th. Int. He declared the company impaired?

Ans. Not officially.

180th. Int. How was that result made known?

Ans. Through an interview I held with Mr. Church personally.

181st. Int. How did you make it known to the directors?

Ans. They were called together.

182d. Int. Who were absent from that meeting?

Ans. I am not able to state.

183d. Int. Do you remember whether any were absent?

Ans. I could not give the name of any one that I know to be.

184th. Int. What is your impression as to whether any one was absent?

Ans. Some of them were likely to be; I am not sure. It is very probable some one or more would be.

185th. Int. Do you remember whether Mr. Williams was present?

Ans. I think he was.

186th. Int. Was Mr. Melone present?

Ans. I cannot state.

187th. Int. Mr. Glaze?

Ans. I have nothing by which I can recollect positively.

188th. Int. I do not ask you to recollect positively; give us your best impression.

Ans. Naming each one separately that way, I would say I think each was there, but I cannot say all were there.

189th. Int. Do you think Mr. Melone was there?

Ans. I think he was.

190th. Int. Do you think Mr. Glaze was there?

Ans. If any one was absent, I cannot designate that one; I think the minutes of the meeting would show.

191st. Int. Do you think Mr. Glaze was present?

Ans. I think he was.

192d. Int. Mr. Hoeman?

Ans. I think he was.

193d. Int. Mr. Loudon?

Ans. I have no definite recollection in the matter. I can call to mind that sometime Mr. Loudon was out of town, but whether it was then or not I cannot state.

194th. Int. Mr. Hays?

Ans. I think he was.

195th. Int. Mr. Forbes?

Ans. I think he was.

60 196th. Int. How long did that meeting last?

Ans. I presume it lasted one hour.

197th. Int. Was Mr. Church still in Macon?

Ans. He had left Macon.

198th. Int. What took place at that meeting?

Ans. They authorized Colonel Forbes and myself to go and confer with Mr. Church, and make known the wishes of that board with regard to making good the impairment.

199th. Int. Did you go?

Ans. We did.

200th. Int. Where?

Ans. Columbus, Ohio.

201st. Int. Who went with you?

Ans. No one.

202d. Int. At that meeting, was anything said as to what had taken place while Mr. Church was in Macon—was any statement made there as to just how the company stood; what assets it had; what indebtedness it had; how it had come to be declared impaired; how the second mortgages you referred to were not exhibited; and how the impairment could be made good; was either of these topics discussed?

Ans. I cannot recollect of anything else, but the amount of the impairment was made known by his investigation of their affairs, and they were very unanimous in expressing a desire to make it good, and that was the object of our mission there, to so inform him and see what time could be had.

203d. Int. Do you wish us to understand, simply, that you called the directors together and stated to them the naked facts, that Mr. Church had come to the conclusion that there was an impairment, and that thereupon there was a desire expressed to make that impairment good, and that nothing else took place at that meeting, and no inquiry made as to how the company stood; what it had; and what it owed; but with their eyes closed, they expressed a desire to make good any impairment?

Ans. I think they had the result of his investigation, which showed the impairment, and showed to them what that impairment was.

204th. Int. How did they have the result of his investigation?

61 Ans. I think he left it with them. I think he gave it to me.

205th. Int. In what shape?

Ans. I think it listed the securities of the company with his valuation affixed, and the liabilities of the company determined by him. There

was one thing I remember being talked of especially. They thought he had been unfair in the examination, and was arbitrary in fixing the valuations and determining the liabilities; that engaged discussion for a time. They concluded there was no alternative but to make it good, and dispatched myself and Colonel Forbes to interview him with regard to time.

206th. Int. How many pages did that list of securities, valuations, and indebtedness cover?

Ans. I do not remember, sir. It was a small memorandum, two or three sheets.

207th. Int. In whose handwriting was it?

Ans. I think, sir, it was supposed to be in the handwriting of Mr. Church or his assistant.

208th. Int. What became of that?

Ans. I have no knowledge. I do not know.

209th. Int. It was that, then, that was before the meeting, and on which they acted?

Ans. It was.

210th. Int. Are you certain of that?

Ans. Well, I am not certain there was an exhibit made of that, but I conclude there was; the company had one.

211th. Int. What do you mean to say, when you say you conclude there was?

Ans. I know the company had one subsequently. I do not know whether on that morning or not.

212th. Int. When do you know it had one?

Ans. I cannot remember when I saw it; I suppose it to be in the possession of Mr. Walker now. I supposed it to be with the company from that time to the present.

213th. Int. Was it in writing?

Ans. I think it was written in lead-pencil. I am not sure.

214th. Int. (Mr. MYERS.) You say, Mr. Larrabee, Mr. Church made and left a list of securities of the company; did it list among those
62 securities we have been speaking of, the Schuyler County bonds, the Macon County bonds, and the others?

Ans. I think it listed them all.

215th. Int. What is your present recollection as to whether or not that memorandum was before the meeting, used at the meeting that you have referred to, namely, the meeting called after Mr. Church had left, and you had known his conclusion?

Ans. My best recollection with reference to that matter is, the memoranda made by Mr. Church were brief, but they showed the securities that he examined, and they showed the liabilities of the company, and that there was perhaps no more than a single sheet of paper used in making that exhibit, or showing the result of his examination, and I think it was used at that board meeting.

216th. Int. Was there any discussion at that meeting or at any other meeting as to how the company had become possessed of any of those securities?

Ans. None that I recollect. I do not think they were inquired into at that meeting.

217th. Int. At any other time?

Ans. I do not remember they were at any other time specially. I have no recollection about the matter of their being called up and discussed.

218th. Int. Have you any impression whatever upon the subject?

Ans. Well, I could not say I had.

219th. Int. You cannot say you have any impression at all?

Ans. None which I call to mind now.

220th. Int. It was stated at the meeting we have just been speaking about that the assets mentioned in this statement by Mr. Church had been exhibited to him as the assets of the company, was it; was anything to that effect said?

(Mr. Allen, counsel for defendant, objected to the question as leading.)

Ans. I do not know that anything was said; I presume that was generally understood. He made to them an exhibit of what he had examined, and what value he had fixed upon them.

(Counsel for defendant objected to the answer as irresponsive to the question.)

221st. Int. For what purpose was that paper produced?

63 Ans. I cannot say with any certainty it was produced. I am presuming it was. I know there was such a paper; and, if so, it was produced to show he had made an impairment.

222d. Int. You say you presume it was produced. You believe it was produced, do you not?

Ans. I believe it was used at that meeting.

223d. Do you know what became of that paper?

Ans. I do not.

224th. Int. Where did you see it last, if you can recall?

Ans. I think I saw it last in the company's office in this city after their removal here in the safe of the company, with other memorandas and papers.

225th. Int. Was any list made out to be exhibited to Mr. Selby?

Ans. There was.

226th. Int. Who made that out?

Ans. Mr. Langdeau.

227th. Int. Did that embody these securities of which we have been speaking?

Ans. It did principally, perhaps all of them.

228th. Int. Are you in doubt about that; do you think it omitted any?

Ans. Changes were being made all the time in securities. There may have been some changes.

229th. Int. Was there any changes in the Schuyler County bonds?

Ans. I think not, sir.

230th. Int. Or Macon County bonds?

Ans. I think not.

231st. Int. Knox County?

Ans. None that I know of.

232d. Int. Burlington and Southwestern Railroad Company?

Ans. I think not, sir.

233d. Int. Was anything embodied in that that was not in the statement left by Mr. Church that you can recall?

Ans. I suppose the examination was made on the same securities. There was a statement made to Mr. Selby, but none to Mr. Church. Mr. Church asked for none. His examination was of such papers as he found and the books of the company in their office, while Mr. Selby's examination was quite different, and it was upon the statement furnished.

234th. Int. Were these assets exhibited to Mr. Selby?

64 Ans. I think they were.

235th. Int. Where?

Ans. At the office of the company, except it was the bonds of the company, and they would be exhibited at the bank, as they had been to Mr. Church.

236th. Int. The bank of Melone and Epperson?

Ans. Yes, sir; that was known as the bank of Melone and Epperson, and I think it was called by another name.

237th. Int. What other name?

Ans. It was formerly known as the bank of Melone & Epperson, afterwards it was called the First National Bank or the National Bank of Macon, and still another change, which I think it carries now, and that is, Macon Savings Bank; which name it had at that time I cannot remember.

238th. Int. At what meeting was the statement prepared for Mr. Selby used?

Ans. I don't know that it was ever used at any meeting of the board.

239th. Int. Was it before any meeting of any of the individuals who were on the board?

(Counsel for defendant objected to the question as leading.)

Ans. I don't remember it was. I would say here, I am not sure that statement was ever completed for Mr. Selby. He went there about the same time as Mr. Church, and adjourned his examination of the company until Mr. Church had completed, and it is questionable in my mind whether that statement which Mr. Selby called for previous to his going there was ever completed. I cannot say.

240th. Int. In what particular was it incomplete?

Ans. I know it was begun, but it would probably take a week to make up the statement, and I don't think they had been given that time before the examination of Mr. Church began. No further preparation of statement had been made on account of Mr. Selby.

241st. Int. What became of that statement prepared for Mr. Selby, do you know?

Ans. I don't think it was ever used outside of the office. I don't think Mr. Selby ever took it with him.

65 242d. Int. What became of it?

Ans. Whether completed or in process of being made, it was probably left in the office.

243d. Int. When did you see it last?

Ans. I don't know I ever saw it at all. I have no recollection I ever did. This statement was unlike in some respects the annual statement; it was a schedule of what the company possessed. That examination might be on the list of schedules.

244th. Int. You don't know when you saw it last?

Ans. I don't know that I ever saw it. I don't think I ever did. I know they had commenced to make one, because Mr. Selby asked for it. He gave less time to make it than was necessary to make it. It was began; whether concluded or not after his arrival, I cannot say. It was entrusted to Mr. Langdeau.

245th. Int. Did Mr. Selby make known the result of his investigation?

Ans. Not at that time.

246th. Int. How soon did he make it known?

Ans. Not till after their removal to this city, nor till after the securities had been procured that were necessary to make it good, according to the examination of Mr. Church. Mr. Selby's examination covered a period of perhaps thirty days, or nearly.

247th. Int. During the period of Mr. Selby's investigation was there

any discussion among any of the members composing the board as to what would be necessary to make this supposed impairment good?

Ans. Yes; some.

248th. Int. Between whom?

Ans. I don't recollect any conversation that was held by any particular members of the board. The conclusions arrived at were these, that it would be necessary to come to St. Louis with the company, in order to get the necessary help to make the statement good.

249th. Int. In respect to the statement of January 1st, 1873, was anything done except to file it in the insurance department?

Ans. That is all that I know.

250th. Int. Were copies of it printed?

Ans. There was not.

251st. Int. Or copies of it made in any form?

Ans. I presume that it had been abstracted on leaflets. That is usual.

252d. Int. For what purpose?

Ans. For the use of agents.

66 253d. Int. For their use; for what purpose?

Ans. Representing to the public the condition of the affairs of the company.

254th. Int. I hand to you one of those papers, (market Exhibit No. 7, herewith attached.) Look at that and state whether that is one of the leaflets, as you term it?

Ans. It seems to be one for the eastern department of the business of the company, supposed to be made in that annual statement.

255th. Int. Who had those printed, Mr. Larrabee?

Ans. I, of my own knowledge, cannot state.

256th. Int. Did you have any leaflets printed?

Ans. I don't remember whether we did or not.

257th. Int. What is your best recollection as to that; do you think you did?

Ans. It is usual to print them, and I suppose we did.

258th. Int. Do you remember of any year when you ever failed to?

Ans. No; I do not. I think one was made up every year.

259th. Int. Did you have these leaflets printed in large quantities?

Ans. Well, yes; in considerable amount.

260th. Int. What do you mean by that?

Ans. I mean, if we had any published it was in quantity sufficient to supply agents with. I think this statement was published in New York, by Mr. Berne.

261st. Int. Do you know from what?

Ans. By its purporting to come from the eastern department of the company, and his name signed as general agent.

262d. Int. You misunderstood the question. From what data is it made up?

Ans. It is made up showing the statement of the company, January 1st, 1873.

263d. Int. Do you know whether it included the different bonds spoken of?

Ans. I think it does.

264th. Int. You say they had them printed, if at all, in sufficient quantities to supply agents; agents where?

Ans. Agents reporting to the office of the company at Macon.

265th. Int. Agents almost all over the United States?

Ans. Not including the eastern department. They reported to New

67 York. That is why I suppose this was published there and furnished from that office.

266th. Int. If printed at all, you had many thousands of them printed, did you not?

Ans. Well, I would say, usually in quantities of five or ten thousand.

267th. Int. For the departments other than the eastern department, did you have them printed at Macon or St. Louis?

Ans. Not always. Our printing was usually done at St. Louis or Chicago.

268th. Int. Do you know whether copies were furnished to the directors?

Ans. I do not, sir.

269th. Int. Do you know whether they got copies?

Ans. Copies were accessible to them. I cannot say whether they had them or not.

270th. Int. Who prepared the statement of January 1st, 1873?

Ans. I think it was prepared by Mr. Langdeau; it might have been arranged by Colonel Curtis. If so, I think it was under the supervision of Mr. Langdeau.

271. Int. Where did he get the data in respect to the bonds that were at the bank?

Ans. I could not say positively. He was the custodian of all the papers and memorandas with regard to securities; he kept them.

272d. Int. Was there more than one original of that January 1st, 1873, statement prepared?

Ans. They were prepared for different States, where we were doing business.

273d. Int. One for each State?

Ans. One for each State where they were required.

274th. Int. In about how many States were they required, if you can recall?

Ans. In nearly all the Western and Middle States, and, in fact, the Eastern States. Very few of the Southern States required them.

275th. Int. Was a copy of that annual statement retained by the company?

Ans. I think it was.

276th. Int. More than one?

Ans. I think not.

Mr. ALLEN, of counsel for defendant. To save the trouble of interrupting you from time to time, do you assent that I may have a general statement of objections to all leading questions, put in at the end of the deposition?

68 Mr. MYERS. Yes; I am perfectly willing. I am leading the witness intentionally, deliberately.

Mr. BARROW. Let that be put down.

277th. Int. Mr. MYERS. Was one furnished to each of the principal agencies of the company?

Ans. Not that I know of.

278th. Int. Do you remember whether one was furnished to the New York agency?

Ans. I think it was.

279th. Int. The Chicago agency?

Ans. I cannot state that it was.

280th. Int. To the St. Louis agency?

Ans. I do not think it was.

281st. Int. Now, was there any consultation or conference among any

of the members of the directory in respect to the preparation of the annual statement of January 1st, 1873?

Ans. Matters pertaining to it may have come in their board meetings previous to making it. I don't recollect that there was a board meeting called to which this was submitted and specially talked of.

282d. Int. What is your impression as to whether it was talked of at a meeting preceding the time it was delivered to the insurance department?

Ans. There is nothing which brings to my recollection, nor anything concerning it; those things were probable.

283d. Int. Do you think it was talked over with any of the members of the directory?

Ans. Of course I cannot remember a word that was said.

284th. Int. Where was the copy that was retained by the company kept?

Ans. Mr. Langdeau had its custody with other statements. I think copies of all statements made to the department had been preserved.

285th. Int. Were they open to the access of the different members of the directory?

Ans. Not exactly. Every member could have seen them by calling for them, but he may not have known where they were kept.

286th. Int. They were open to access when called for?

Ans. They were.

287th. Int. Do you know whether any of the members of the directory had a copy?

Ans. I don't think copies were ever made for them; they had the original copy, if any.

288th. Int. What do you mean by the original copy?

69 Ans. The one that was retained in the company's office.

289th. Int. This statement of January 1st, 1873, was prepared on a printed form, was it not?

Ans. It was, and copies of it made.

290th. Int. Contained in several large pages?

Ans. It was; copies of this were made to the respective departments where we were doing business.

291st. Int. Where did you procure these printed forms, from the department?

Ans. They are almost invariably furnished by the different departments, and sent on to the company's office prior to the time of making these statements.

292d. Int. Do you remember whether every member of the directory had a copy?

Ans. I don't think he did.

293d. Int. Do you think Mr. Williams had none?

Ans. I think not.

294th. Int. Were these statements sworn to?

Ans. I think they were.

295th. Int. All of them?

Ans. They all purported to be sworn to; one was a copy of the other; they were copies; they were all signed. I don't know that any one but the original one would be sworn to.

296th. Int. Was each original deposited in each insurance department of the different States, sworn to?

Ans. I cannot say that it was. I don't know.

297th. Int. By whom were they sworn to?

Ans. These statements were made by Colonel Williams and myself, I think—the January statement I refer to, 1873.

298th. Int. Signed and sworn to by yourself and Colonel Williams?

Ans. They were.

299th. Int. Were they examined by yourself before they were signed and sworn to?

Ans. I think they were, sir; I don't know how specific or exact we were in the examination.

300th. Int. Do you remember where they were signed and sworn to?

Ans. I do not.

301st. Int. Do you remember where they were signed and sworn to by Mr. Williams?

Ans. I do not.

302d. Int. Did he keep a statement for examination any time before he signed it?

70 Ans. I don't know I saw him sign it; I don't think I was present.

303d. Int. You don't think you were present?

Ans. I don't think I was.

304th. Int. Mr. Williams is a lawyer, is he not?

Ans. He is.

305th. Int. He was at that time?

Ans. He was.

306th. Int. Did you take it to him while court was in session and he engaged, and have him sign it, and did he sign it hastily and without examination, and swear to it in such manner?

Ans. I don't remember whether it was taken to him by myself or not; that was his usual custom in signing papers; just sign what he was asked his signature for.

307th. Int. In respect to papers that he had to swear to, he did not pursue that custom, did he?

Ans. I don't remember in this case. I cannot call to mind whether I took the papers to him or not, or whether it was some one else.

308th. Int. He was at that time president of the company?

Ans. He was.

309th. Int. Was Judge Barrow connected with the company at that time in any way?

Ans. Judge Barrow was interested as a stockholder in the company, and I think he was acting as its attorney, too. He was, I know, in some stock cases; whether he was the general attorney of the company, I do not remember.

310th. Int. About January 1st, 1873, was any statement published in any newspaper in respect to the condition of the company?

Ans. None which I recollect. I don't think it is required by the law of this State to publish them. It is in some States, but when or wherever that was the case, it was done by agents. I don't know I would be consulted in it. I don't recollect now.

311th. Int. Have you any impression on your mind that any statements were published in any newspaper in this State, about that time, whether required or not required; do you know whether you can recollect any particular paper or not, or have you any impression that publication was made in any newspaper?

Ans. This is like a great many other things I cannot be certain about. I don't recollect any such publication, still it is quite probable they were made. If made, I would say that more than likely it would be
71 made here than any place, and by Mr. Cloud, the agent.

312th. Int. Who delivered the remaining assets of the company to Mr. Walker, the assignee in bankruptcy?

Ans. I think the delivery was made by turning over the keys of the safe to Mr. Walker by one James G. Howe, who was the custodian. Mr. Walker was told the safe contained the securities of the company.

313th. Int. Where did Mr. Howe get the keys?

Ans. He carried them. Mr. Howe carried the keys of the safe; he was the cashier and book-keeper.

314th. Int. Had you access to the safe?

Ans. Only when I went to Mr. Howe to open the safe.

315th. Int. Did you have access about the time the company's office was closed?

Ans. Yes, I did; almost daily. I never went to it that I know without going to Mr. Howe.

316th. Int. Were any of these bonds of which we have been speaking delivered to Mr. Walker?

Ans. I don't remember that any of them were; there may have been a few, but I think they were on deposit here in bank, all that we brought here.

317th Int. What few do you refer to; Macon County?

Ans. Some Macon County bonds, some Knox County, some Clark County.

318th. Int. On deposit where?

Ans. The Bank of North America.

319th. Int. Were any others than those delivered to him?

Ans. None that I remember.

320th. Int. Those were not delivered to him except as he was told they were at that bank?

Ans. That was the kind of delivery that was made.

321st. Int. The Schuyler County bonds were not delivered to him?

Ans. They were not, that I know of.

322d. Int. Burlington and Southwestern Railroad bonds were not delivered to him, were they?

Ans. Not that I have any knowledge of.

323d. Int. And the $29,000 Macon County bonds of which you have spoken were not, were they?

Ans. Not that I know of.

324th. Int. The notes of Moberly were not?

Ans. I think not.

325th. Int. Adair Normal School bonds?

Ans. I think not.

326th. Int. Were the Knox County bonds of which you have
72 spoken, delivered to him?

Ans. I think some of them were, and perhaps all in that deposit with the Bank of North America.

327th. Int. Do you know what became of those bonds and notes?

Ans. I do not, sir.

328th. Int. How happens it you don't know?

Ans. I was no party to the disposition of them. I never was told how they were disposed of.

329th. Int. You were the managing officer of the company, were you not, practically?

Ans. Yes, it could be said that I was; I was its secretary.

330th. Int. Well, in point of fact, were you during the period of which I have been speaking, viz, during the time these defendants were in

office, up till June, 1873, were you not the active manager of the insurance company, practically?

Ans. I suppose I was; not exclusively so.

331st. Int. Who else participated in the active management?

Ans. Well, there were different parties, which would perhaps embrace most of the directory.

332d. Int. But in point of fact, who?

Ans. The directory had control, the management and custody was under their direction.

333d. Int. Aside from the board of directors and the president, was any one superior in authority to you?

Ans. There was not.

334th. Int. You gave your entire time to the affairs of the company, did you not?

Ans. I did.

335th. Int. Exclusively?

Ans. I did.

336th. Int. The directors all resided at Macon, did they not?

A. They did.

337th. Int. Now, if any of those assets had been devoted to purposes of the company, would you not have known the fact?

A. I think I would.

338th. Int. Were any of these bonds or notes of which we have been speaking, devoted to any purpose of the company, applied or appropriated to the objects of the company; if so, which of them, and where?

Ans. I cannot very well enumerate which, if any.

73 339. Int. Were any, to your knowledge?

A. Yes; the bonds of the company represented in these schedules were so appropriated, but from recollection I could not designate the particular bonds.

340. Int. Appropriated how?

A. I am not able to say how appropriated; they were with the company when the assets of the company were turned over.

341. Int. Turned over to whom?

A. To Mr. Walker.

342. Int. Aside from those that were with the bank when they were turned over to Mr. Walker, were any of them devoted to the objects of the company?

A. I have no knowledge that they were, except in a manner I would claim the right to explain, that their equivalent in value was and is in possession of the company now in second liens; that is the qualification I would make to the appropriation.

343. Int. I did not ask you whether the company had an equivalent in second mortgages; I asked you whether to your knowledge the bonds and notes of which we have been speaking were devoted to any purpose of the company to your knowledge; and, if so, under what circumstances; in short, I want you to state, if you know, how the company became dispossessed of the bonds and notes of which we have been speaking, if you know.

A. I can't tell you that; I don't know. I don't recollect that any of those passed through my hands.

344. Int. Do you know when it became dispossessed of the Schuyler County bonds?

Ans. I do not, sir.

345. Int. When did you first learn that they were no longer possessed by the company?

A. I have no means of knowing now, sir, but what they are there; I was no party to their removal.

346. Int. When did the company move its main office to St. Louis?

A. Some time about the middle of June, 1873, I think.

347. Int. Was it while these gentlemen were in office?

A. It was about the time that these resignations were made.

348. Int. Was it before or after that?

A. I am not certain; I think it was after; I think it was going on at that time; my impression is it was after.

74 349. Int. Who brought the assets of the company from Macon to St. Louis?

A. I think Mr. Langdeau brought them.

350. Int. Did you bring any of them?

A. Possibly I did bring some of the bonds before the removal of the company, but if Mr. Langdeau was along with me at the time, he had them instead of myself. I cannot remember.

351. Int. For what purpose did you bring them prior to the removal of the company?

A. I think it was to assist in borrowing some money with them.

352. Int. Do you remember what bonds they were?

A. They were bonds that were subsequently deposited with the Bank of North America, at St. Louis; some bonds.

353. Int. Did you bring any other bonds to St. Louis than those?

A. I don't know that I did.

354. Int. When the assets were removed to St. Louis, where were they placed?

A. I think they were taken to the Laclede Hotel first.

355. Int. And where placed there?

A. In the safe of the hotel.

356. Int. In whose name?

A. I don't remember.

357. Int. Who placed them there?

A. I could not say whether it was myself or Mr. Langdeau, or some one else connected with the directory; they were there for some days.

358. Int. How many days?

A. Were the securities there or the directory?

359. Int. The securities.

A. Well, they were there, I suppose, until the company moved down and got into their office. I could not tell you; probably a week.

360. Int. And you don't remember whether they were in your name, subject to your order, or to the order of some one else?

A. I do not; the examination was made of them while they were there.

361. Int. By whom?

A. By the commissioner of Illinois.

362. Int. Were you present?

A. I was most of the time; perhaps not all the time.

363. Int. Were the Schuyler County bonds among them?

75 A. They were not.

364. Int. Did nothing suggest itself to you about the Schuyler County bonds when you found they were not there to be exhibited to the superintendent of Illinois?

A. I don't remember of anything that came up in reference to them.

365. Int. Were the $29,000 of Macon County bonds there?

A. I really don't know what were there.

366. Int. Were those there?

A. But I never saw any of those bonds after we came to St. Louis. I cannot remember what securities were there at that time; and when that examination was had with Mr. Overall, the commissioner, I think, made the examination with Overall, who was an attorney representing the company.

367. Int. Were the notes of Mr. Moberly there?

A. I think they were; I think all real estate securities were brought here; that is what makes me think they were; I don't recollect them specifically.

368. Int. You made no inquiry as to what had been done with the Schuyler County bonds when you found they were not at the Laclede Hotel?

A. I cannot say of my own knowledge they were not; I never saw them.

369. Int. Was any statement made to the insurance commissioner of Illinois that the company still owned the Schuyler County bonds?

A. I don't know what statements were made.

370. Int. Did you make any statement to them?

A. Not that I know.

371. Int. Who was that commissioner; was his name Lippencott?

A. No, Stadden,

372. Int. A deputy representing him?

A. Yes; he was insurance commissioner, in fact; they have an auditor of state there, they make ex-officio superintendent of insurance, and he appoints a man for commissioner; and this man was Stadden.

373. Int. How long was Mr. Stadden in making the examination?

A. He was here about two days, I think.

76 374. Int. Did Mr. Williams have anything to do in that matter?

A. Mr. Williams was present; I don't know he took any part in it. My recollection about that matter is this: that Mr. Stadden's examination was chiefly and perhaps exclusively in reference to additional securities that had been placed in the company. I don't recollect whether Mr. Williams was present at the time of the examination; I do not think he was.

375. Int. Was no inquiry made as to what had become of the Schuyler County bonds?

A. I don't think the matter was called up at that time at all. I think the examinations as made by Mr. Selby and Mr. Church were accepted by Mr. Stadden, and he went on to make a further examination of other securities.

376. Int. Assuming that the company still had those securities, now what led him to assume they still had those securities?

A. I don't think the examination of Mr. Selby was concluded yet; I don't believe it was at that time.

377. Int. What led Mr. Stadden to assume the company still had those securities?

A. I could not tell you. I don't know any inquiry was ever made by him in regard to them.

378. Int. Who took the securities away from the Laclede Hotel?

A. I think it was Colonel Kitchen.

379. Int. Where were they taken?

A. I don't know, sir. Something was said about their being taken to the Safety Deposit Company.

380. Int. Where did you next see them?

A. I don't think I ever saw them afterwards all together. I saw little batches of them.

381. Int. Where were they kept, do you know?

A. I do not, sir.

382. Int. Did the company have a vault or box in the Safe Deposit Company?

A. I don't know. It was talked of in board meeting one time, and something said about Colonel Kitchen procuring it for such pur-
77 pose. I don't know it was ever done. I was not informed.

383. Int. Where was its office in St. Louis?

A. I think the numbers were 513, Olive street; I am not certain about it.

384. Int. Did it have a vault there?

A. Yes.

385. Int. Did it keep any of its securities there?

A. Subsequently it did. I think they were all there, except that were used for collateral for some purpose previous to going into bankruptcy.

386. Int. What makes you think that?

A. Because reference was had to them frequently in selecting securities on which they could procure loans, and they were frequently used in the board meetings, and the executive committee frequently l erence to them. I think they were brought there about that time.

387. Int. Did you have access to the vault?

A. I did through Mr. Howe; he carried the keys.

388. Int. You had access to it?

A. I did.

389. Int. Over it pretty often?

A. No, sir.

390. Int. Daily?

A. I think not that frequent; nearly every day.

391. Int. Did you see any of these bonds or securities there?

A. Which have you reference to?

392. Int. Any whatever—any of the bonds or securities of the company?

A. At that place?

393. Int. Yes, sir.

A. There is nothing by which I can recollect certainly about them. You may ask me if any of the books of the company were kept there, and I would tell you they were, and still I could not tell you which ones.

394. Int. I am not asking you about that.

A. There is nothing by which I can state exactly.

395. Int. You do remember books were kept there?

A. Yes, sir.

396. Int. Do you remember any securities were kept there? I do not ask you which

A. Oh, yes; I know there were.

397. Int. You saw some of them there, did you not?

A. I went there for securities, certainly.

78 398. Int. Did you see any Schuyler County bonds there?

A. I never did.

399. Int. Or any of the $29,000 Macon County bonds?

A. I never did.

400. Int. Or the Burlington and Southwestern Railroad bonds?

A. I never saw them since I came to Saint Louis.

401. Int. Or the notes of Moberly?

A. I don't remember about them.

402. Int. You spoke of some second mortgages; what did they aggregate?

A. I don't remember the amount; it was in excess of $100,000.

403. Int. Were they exhibited to Mr. Selby?

A. I think not.

404. Int. They were not?

A. I think not.

405. Int. Where were they; who had the custody of them?

A. They were in the office of the company.

406. Int. In Macon?

A. I suppose them to be there; they were not always there.

407. Int. Who had their custody while they were there?

A. Those in charge of the office.

408. Int. The office was in charge of whom?

A. The officers of the company and their employés.

409. Int. Were you not in charge of the office?

A. Not personally, all the time.

410. Int. There was no one superior in authority to you, was there?

A. No; there was not. I was absent, you will recollect, a great deal. I had no personal control when I was away.

411. Int. You say you were absent a great deal?

A. I was.

412. Int. You were not absent the bulk of your time?

A. Yes, I was.

113.

414. Int. During May, 1873, while these examinations were going on, were you away, or were you there?

A. I was during the examination by Mr. Church.

415. Int. Where were the second mortgages then?

A. They were about the office some place, I suppose; I did not see them.

79 416. Int. Were they in the vaults of the company?

A. I think they were.

417. Int. And when taken away, who took them away?

A. I suppose they were taken here with the other papers and securities.

418. Int. And before they were brought here what was done with them?

A. They were frequently in charge of the committee on real estate, or the attorney of the company.

419. Int. For what purpose?

A. For the purpose of making changes. There was a man appointed specially to take these in charge—man of the name of Blair. He looked after the abstract of titles and records.

420. Int. Making changes in which respect?

A. There were a good many transactions which included all those second liens where stock of the company was given for real estate, for which they would make these deeds of trust; Mr. Blair was charged with this work, and kept those papers almost all the time in his possession.

421. Int. Except for some such purpose as that, they were under your control?

A. They were.

422. Int. How had the company acquired those mortgages?

A. Sold stock of the company for them.

423. Int. And they had accumulated during those years, had they not?

A. They had.

424. Int. Had been accumulating for how long?

A. Since the organization of the company.

425. Int. Had always belonged to the company, had they not?

A. Yes.

426. Int. Did they secure stock notes, those second mortgages?

A. No, sir.

427. Int. They were transactions which were had and were considered as a payment for an agreed amount, to an agreed amount of stock?

A. Precisely; they were.

428. Int. Land would be conveyed by purchasers of stock or subscribers for stock to some one designated by the company, who
80 would in turn execute a mortgage, a note and mortgage to the company?

A. A note and deed of trust.

429. Int. This company held the note of this person, and this mortgage?

A. They did; that was the arrangement.

430. Int. In respect to all second mortgages the company held notes?

A. They did.

431. Int. And to that extent you represented to the commissioner, did you not, that you had a certain amount of paid up capital?

A. We did, covering these notes.

431½. Int. To that extent?

A. To that extent.

432. Int. To that extent you had a paid up capital?

A. We did.

433. Int. Do you remember the aggregate—the entire paid up capital you represented yourself to have?

A. I think at one time it reach' $350,000; subsequently there was a relinquishment made, and stock reverted to the company, which would show a less amount.

434. Int. Was this amount of second mortgages part of the $350,000?

A. They were.

435. Int. Did you represent to Mr. Church and Mr. Selby you had a paid up capital of $350,000?

A. We did, or thereabouts. I don't know it was that exact amount.

436. Int. When any of these assets we have been speaking of were parted with by the company—referring to these assets claimed to be missing—was any value then received by the company for them, to your knowledge?

A. None that I know of.

437. Int. If there had been would you have known it?

A. I think I would, if it had been received by the company.

438. Int. Who kept the minutes of the board of directors?

A. They were always kept by me when I was present at the board meetings.

439. Int. Were they regularly written up in the minute book?

A. They were very seldom written up at the time, but would be rewritten afterwards; I don't think they were ever written up after we came here.

81 440. Int. After the company came here?

A. Yes, and perhaps some time previous?

441. Int. Do you know how that happened that they were not?

A. I think there is no reason for it, only neglecting to do it?

442. Int. (By Mr. Myers.) Mr. Larrabee, I call your attention to the record book of the insurance company, and to the fact that the last proceedings entered in that record-book are the proceedings of the board of directors of the 8th of July, 1872, signed by yourself as secretary, and at which meeting were present Mr. Forbes, Mr. Hays, Mr. Holman, Mr. Melone, Mr. Glaze, and yourself. I will ask whether any minutes were kept after that, or any record rather after that?

A. Minutes were kept of the meetings of the board since that time, but were not put on record.

443. Int. In what shape were they kept?

A. They were made in memoranda, and filed for the purpose of referring them to some one in the office, who would write them up afterwards and obtain my signatures, as appears of record here.

444. Int. I will ask you whether you know of any attempt made by any of the defendants in this case to recover any of the assets mentioned by me in your examination of yesterday as missing?

A. Not that I have any knowledge of that I call to mind at this time.

445. Int. Or whether you ever heard any remark made by either of them upon the fact of their being missing?

A. I don't remember any conversation with reference to the securities of the company.

446. I will call your attention to the resignation of Mr. Williams, as president of that company, of date June 20th, which I now hand to you, marked Exhibit 8, G. B., and I will ask you whether that is the date of his resignation?

A. I recognize that as the handwriting of Colonel Williams, bearing date the 20th June, 1873. I don't remember about the action of the board upon it—what that was.

82 447. Int. Was any resignation sent in by him prior to that?

A. I think not.

448. Int. I call your attention to a memorandum which I now hand you, and which purports to be a memorandum of the proceedings of the board of directors at their meeting held June 20th, 1873, at Macon City, bearing the signatures of John M. Loudon, secretary pro tem., and John M. Williams, president, and in which is a memorandum of a resolution as to the removal of the company to St. Louis. I will ask you whether the removal of the company to St. Louis was agreed upon prior to that time? (Paper marked Exhibit 9, G. B., is here shown witness, and is attached to this deposition).

A. I think it was talked of prior to that time, but no action was taken.

449. Int. That was the first formal action?

A. That was the first formal action I know to be taken.

450. Int. I hand you a paper marked Exhibit 10 (hereto attached) purporting to be a memorandum of the proceedings of the board of directors of the company at a meeting held by them in St. Louis on the 21st of June, 1873, and which memorandum is signed by yourself. I will ask you whether that was the first meeting of the board of directors held at St. Louis?

A. These are the minutes of the first board meeting held in St. Louis.

451. Int. I hand you a paper marked Exhibit 11 (hereto attached), and I will ask you in whose handwriting it is, and by whom it is signed?

A. It is in the handwriting of Col. Williams, and bears his signature.

Cross-examined by Mr. SHARP, of counsel for defendants:

1. X int. Mr. Larrabee, you were secretary of this company during the time spoken of?

A. I was.

2. X Int. How a period, and during what time?

A. From the organization of the company until its going into bankruptcy.

83 3d. X Int. Mr. Melone was treasurer?

A. He was.

4th. X Int. Were there any bookkeepers or clerks in the establishment; & if so, who was in 1872 and until the company was removed to St. Louis?

A. In the years 1872 & 1873 there were two men employed as bookkeepers, and a portion of the time three.

5. X Int. Name them.

A. James G. Howe, C. J. Munson, C. H. Langdeau.

6. X Int. In what capacity were these gentlemen there?

A. Mr. Munson kept the business accounts of the company; Mr. Howe assisted in that, and was cashier of the company—received the money. Mr. Langdeau kept the general accounts, a sort of financial bookkeeper.

7. X Int. Did those gentlemen, or either of them, have a pretty full or general knowledge of the business affairs and assets of the company?

A. They did, sir.

8. X Int. Which ones?

A. Mr. Langdeau had the best information with regard to it. Mr. Munson was with the company from the time of its organization until its failure, and he knew pretty generally its affairs.

9. X Int. Where is Mr. Munson now?

A. He is in this city.

10. X Int. Where is Mr. Langdeau?

A. He is in this city.

11. X Int. Mr. Howe?

A. He is in Macon, Missouri.

12. X Int. Did those three gentlemen spend the most of their time at or about the office of the company?

A. Exclusively, the three did.

13. X Int. Were any of the directors in the habit of being about the company any considerable portion of the time?

A. Very little, sir.

14. X Int. Was the president in the habit of being about the company any considerable portion of the time?

A. He visited the office frequently, but not to give the business of the company any special attention.

15. X Int. Suppose there were papers for him to sign or any
84 matters of that sort, was he in the habit of spending any time looking into it, or giving the paper his signature as presented to him, as a general thing?

A. He usually gave his signature when it was asked for, without much inquiry into it.

16. X Int. When he would drop into the company in the way you speak of, would he spend any length of time in there?

A. Very seldom he did.

17. X Int. Did he undertake to overlook the minutiæ of the affairs or liabilities or assets; give any attention to those things?

A. I have no knowledge that he did.

18. X Int. Do you remember when that company was organized?

A. It was organized in July and August, 1867.

19. X Int. What was its progress and success and prospects from that time on down to 1870 and 1871 and 1872? Was it understood to be doing a profitable business or otherwise?

A. Its business was an unsually good one, growing continually.

20. X Int. And these gentlemen that you have spoken of had the management of it pretty much during that time that it was in a prosperous condition?

A. It was in a prosperous condition to the time of its difficulties, just a few months preceding going into bankruptcy.

21. X Int. These gentlemen you have spoken of as being bookkeepers, clerks in the establishment, had been there during most of the time of its existence—during that period of its prosperity?

A. Mr. Langdeau and Mr. Munson had been during the time; Mr. Howe went in later.

22. X Int. Did Mr. Melone spend any portion of his time at that company, or was he engaged in business elsewhere?

A. He was engaged in other business; sometimes visited the office; his attention was had usually in the capacity of a director in directors' meetings.

23. X Int. He did not spend his time there, or pay attention to the minutiæ of the affairs of business?

A. Very little, sir.

85 24. X Int. What business was he engaged in there in 1871 and 1872?

A. Banking business.

25. X Int. Was there a bank called the National Savings Bank at Macon?

A. There was, sir; at one time.

26. X Int. Was that in 1871 and '72?

A. I don't know whether it was as early as '71; I think it was in 1872; I don't remember how long it continued under that name; the same bank is in existence yet.

27. X Int. Who was president of that bank?

A. I think Mr. Epperson was.

28. X Int. Do you know who was cashier?

A. I think Mr. Melone.

29. X Int. Do you know who were the tellers and other officers and clerks in it?

A. Mr. Rubey acted in some capacity, I don't know what; secretary, I think, he called himself.

30. X Int. Was Mr. Melone's time devoted to and taken up with the business of that bank?

A. It was, entirely.

31. X Int. The name of that bank was afterwards changed, was it not, and it became the Macon Savings Bank?

A. It was; by which name it does business now.

32. X Int. The same institution?

A. Yes.

33. X Int. Did Mr. Melone continue cashier there?

A. I think there was no change in the officers at that time.

34. X Int. Just a change of name?

A. I think that was all.

35. X Int. Was it Mr. Langdeau, or who was it that had the general charge, if it was under the control of any one specially, of the assets—the bonds and securities of the insurance company?

A. Mr. Langdeau usually had them. Mr. Langdeau was at one time assistant secretary; the last year with the company he was not, and the securities were unusually kept in the safe. Mr. Howe carried the key of the safe always, he was cashier; but when placed there it was usually by Mr. Langdeau; he had access to them; he always had charge of that part of the business, Mr. Langdeau had.

86 36. X Int. Mr. Melone did not have personal charge of them, did he?

A. No, sir.

37. X Int. Did not assume or pretend to have charge of those securities personally, did he?

A. No, sir.

38. X Int. You spoke yesterday of some bonds being produced or seeing them in the hands of Mr. Melone; was that the bank you have spoken of?

A. It was.

39. X Int. Were not those securities in the custody and possession of the bank, and was not Mr. Melone merely one of the officers of the bank, or can you say?

A. That was true, sir, I suppose; I don't know that Mr. Melone was ever designated specially as the holder or custodian of the securities of the company.

40. X Int. These bonds you spoke of as being produced by Mr. Melone, were they not then produced really by the bank and Mr. Melone as cashier or officer of the bank, from a deposit they were on in the bank?

A. There never was any designation that I know of how he held them.

41. X Int. You don't know the particulars about that?

A. Whether as banker or otherwise it was usual for the people to do business with the bank and deposit securities there; any one else of course could do it, simply because he was a banker; he was in fact at the same time treasurer of the company.

42. X Int. But how this was with reference to these securities, the bonds you spoke of as being there at the bank, the particulars of that you don't undertake to state?

A. I do not. I think there was never any designation, sir.

43. X Int. Were they in packages when they were produced at the bank, do you remember, or did you observe?

A. I think the respective denominations of bonds were in separate parcels, but all in the same package.

44. X Int. In separate parcels, but all together?

A. I think so.

45. X Int. Do you know whether they came from the vault of the bank, or did you observe?

A. I did not see from where they were taken?

87 46. X Int. When those bonds were produced at the bank, did Mr. Melone then go on about the business of the bank?

A. He did, sir.

47. X Int. Paid no further attention to it?

A. He did not remain in the room while they were being examined.

48. X Int. You spoke of there being a question about $29,000 of Macon

County bonds; I understood you that about 10,000 Macon County bonds were hypothecated by the company for some money borrowed?

A. They were.

49. X Int. About $10,000, is that the right amount?

A. I cannot recollect the amount; I don't like to be certain; it would approximate that, I suppose.

50. X Int. I understood you that the others, about $29,000 of Macon County bonds, had been in your possession as agent for a railroad company?

A. They were.

51. X Int. What railroad company was that?

A. It was known as the St. Louis, Macon and Omaha Railroad Company.

52. X Int. You held them as agent for that company?

A. I was a director of the company, and during the time I held them the financial agent; in some capacity of that character.

53. X Int. When those 29 bonds were sent by Mr. Howe to be delivered up to Mr. Rubey—do you mean to Mr. Rubey for that railroad company?

A. Yes, sir. Mr. Rubey was my successor. I turned them over by order of the board of the railroad company. These bonds, while in my possession, were deposited with Samuel A. Gaylord & Co. here in the city.

54. X Int. And then when Mr. Rubey succeeded you representing the company by order of the board of the railroad company, you turned over these 29 Macon County bonds to Mr. Rubey for the company?

A. I did, through Mr. Howe.

55. X Int. Do you know where Mr. Rubey kept them after you turned them over to him?

A. I do not, sir; I never saw them but once afterwards.

56. X Int. Where did you see them then?

A. They were with the other bonds when Mr. Church was there, 88 at the time of making his examination.

57. X Int. Was Mr. Rubey at that time connected with the bank?

A. He was; that was his place of business. He was supposed to be connected with it. I am not certain.

58. X Int. Did this insurance company ever acquire those bonds, to your knowledge, after you turned them over to Mr. Rubey through Mr. Howe, purchase them or have any transaction with regard to them, to your knowledge?

A. I was no party to any arrangement by which they acquired them; I have no means of knowing personally anything about it.

59. X Int. I believe you stated a little while ago that when the bonds you spoke of as being produced there at the bank at the time Mr. Church was there, that they were all produced at the same time?

A. They were.

60. X Int. You spoke of the result of Mr. Church's examination there as being that he announced an impairment of the capital of the company?

A. He did; I so represented.

61. X Int. I believe you also said that there was a meeting of the board of directors after that fact was announced by you?

A. I did; there was a meeting.

62. X Int. And that there was some memorandum or statement in pencil of the result of that examination, or the amount of impairment as pronounced by Mr. Church?

A. I am not certain whether that was used at that meeting or not; there was such a one made and furnished the company.

63. X Int. Did that statement undertake to set out any particular assets, any particular securities that the assets of the company consisted of, and any particulars of the liabilities of the company, or was it a general statement—assets, bonds so much, mortgages so much, notes so much, and liabilities so much; was it a general statement without specifying what each item consisted of, or did it undertake to particularize?

89 A. It was a statement made in general terms, not specific, except as to enumerate different classes of securities, but not in what they consisted. Bonds were made separate from the deeds of trust. I don't remember now the particulars of that, but it was short and it was all contained on one single sheet of paper, as I recollect, and on one side of it.

64. X Int. The intention and purpose of that was, was it not, to show the amount of impairment he declared?

A. It was.

65. X Int. The result of his work?

A. In the liabilities he charged for losses unpaid, and for reinsurance according to his estimate, and capital stock.

66. X Int. Was there any specifications of losses?

A. There was not.

67. X Int. And no specification of assets except bonds so much, mortgages so much, notes so much, without specifying what they consisted of?

A. I don't remember how specific that was, but that was about the manner in which it was made up.

68. X Int. Can you state that even that statement was before the board of directors?

A. I cannot, sir, to a certainty.

69. X Int. Did you not state to them that Mr. Church announced the amount of impairment so much?

A. Well, I likely did. I knew that because he had told me, and he furnished me at the time this copy.

70. X Int. You didn't give that to the board of directors nor lay it before them?

A. I don't remember, sir.

71. X Int. You don't remember doing so?

A. I cannot remember whether I did at that time or not. I think it was submitted to them at some time.

72. X Int. You spoke, I believe, of a statement commenced to be made by Mr. Langdeau for Mr. Selby?

A. I did.

73. X Int. Was that by Mr. Langdeau?

A. It was, I think. Mr. Langdeau had charge of that department of the business, and had always made our statements, except that

90 perhaps at that time he had the assistance of Colonel Curtis; what part the colonel took in it I am not able to state now, but it was under the supervision of Mr. Langdeau.

74. X Int. Was that statement that Mr. Langdeau commenced to make ever completed or made into a statement?

A. I don't think it ever was.

75. X Int. Was it ever submitted to Mr. Selby in any shape to your knowledge?

A. I don't know that it ever was. I think Mr. Selby was told we were interrupted by the examination of Mr. Church, and he chose to await

his examination before proceeding further. Our removal here was so soon after, I don't think that was ever completed for him.

76. X Int. Did any of the directors know that Mr. Langdeau had commenced to make the statement even?

A. I cannot say, sir. The notice from Mr. Selby to the company asking them to make a statement for examination was during my absence from the office, and I don't know what action was taken on it.

77.

78. X Int. That would be within the peculiar province of Mr. Langdeau?

A. It would, sir.

79. X Int. In the manner in which the business of the company was managed, the directors and president paying comparatively little attention, or not devoting any attention to the minutiæ of the business; from the manner in which business was done there by Mr. Langdeau, could he not make up that statement without applying to any director or officer of the company?

A. He could, sir.

80. X Int. Was it his habit to apply to them about matters of that sort, the minutiæ of which would be peculiarly within his knowledge, and not in theirs?

A. I have no knowledge that Mr. Langdeau went to the directory for instructions; in matters of that kind he would usually come to me when at home, when not he would assume the responsibility of doing what might be necessary.

81. X Int. And in your absence he had better means of doing it
91 than anybody there?

A. He has the only means of making it; no one else could have made them. My recollection is that no form of the department was furnished for the making of that statement, that it was left for the company to schedule as they saw fit.

82. X Int. At or about what date was it that the assets of the company were removed to St. Louis?

A. It is my recollection they were not all removed at the same time; when we first came to St. Louis and talked with parties here about the arrangement, the bonds or some portion of the bonds of the company were brought here for the purpose of procuring a loan to meet some of the liabilities then pressing the company; subsequently when that arrangement had been entered into, and about the time of this meeting of the 21st or 22d of June, it was when the real estate securities were brought here.

83. X Int. The first ones were brought here probably how long before that?

A. I suppose it would be—I would say ten days or two weeks perhaps.

84. X Int. Then they were all probably brought during the month of June?

A. I think they were, sir.

85. X Int. Was the loan effected upon which these Macon County bonds were hypothecated prior to the time that the last of the securities were brought down?

A. I think not. I think no loan was effected for which these bonds were used as collateral until after the removal of the company here, and the securities had all been brought here.

86. X Int. Those Moberly notes—those also were down have at that time?

A. I think they were, sir.

87. X Int. Where were the securities of the company at the time that loan was effected, including the Moberly notes?

A. I am not able to say where they were kept; they were in the custody of the officers of the company in St. Louis.

88. X Int. If I understand correctly about these Moberly notes,
92 there was one, was there not, for $27,000, and one for $13,500, which amount was a credit on the $27,000 note?

A. That is correct.

89. X Int. Making the entire amount $27,000, not $27,000 and $13,500 also; making the amount $27,000, but put in the shape of credit on the $27,000 note; that $13,500 note represented that credit?

A. That is right; the amount was $27,000.

90. X Int. The $27,000 note then, with the credit on it, and the $13,500 note, were both brought to St. Louis in that shape, were they?

A. I have no means of knowing by which I could state definitely as to that; some of the securities of the company had been used at Macon before our moving here. I know that was not used, those notes were not used for the purpose of collateral, and that all real estate securities of the company were brought here except those which had been previously used there, and consequently would include the Moberly notes.

91. X Int. Was it not the intention to bring both of those notes down with these securities?

A. It was.

92. X Int. And so far as you know, was it not done?

A. That is true.

93. X Int. Up to what period did you remain with the company in St. Louis?

A. I think it was about the 1st of November, at the time it was turned over to Mr. Walker.

94. X Int. How late do you remember seeing the Moberly note or notes among the assets of the company in St. Louis? What is your best recollection?

A. I have no recollection of ever seeing them here in St. Louis.

95. X Int. Have you any doubt of their being brought down here?

A. I have none, sir; I feel very certain they were.

96. X Int. Was there any statement, account, or special memorandum made as to what particular securities were brought down to St. Louis?

A. If so, it was made by Mr. Langdeau. I have no information.

97. X Int. I mean to your knowledge?

A. I have none.

93 98. X Int. Was the purpose, Mr. Larrabee, and intention to bring all of the securities of the company to St. Louis; was that not the object and intention, without specifying any?

A. It was, without specifying any except those which had been used for the purposes of loans.

99. X Int. But I mean all the securities of the company. At the time they removed was it not the purpose and object to bring the whole of them down here and turn them over to the new management?

A. I suppose that to be so. I have never heard an expression in regard to it, nor any question respecting it.

100. X Int. In how many bundles or packages were those securities brought down, from first to last, as near as you can remember?

A. I could not state. There were only two times of bringing securities here, except as there might be transfers, subsequent to their removal—negotiations going on with parties there, and securities would be carried backwards and forwards at times.

101. X Int. Did any of the directors of this company, while at Macon City, take or appropriate to their own use any of the securities of this company?

A. They never did, sir, that I have any knowledge of.

102. X Int. Do you know who are the defendants in this case; have they been read over to you?

A. I think I only know by seeing the parties to the suit published some time ago.

103. X Int. Did Joseph T. Reister, John F. Williams, George P. Glaze, John M. Loudon, Philip T. Holman, Isaac Hays, or James B. Melone, either or any of them, ever appropriate any of the effects or assets of that company to their own purposes or to their own uses?

A. I don't think they did. I have no knowledge that any one of them ever used a dollar of the company's money.

Mr. SHARP. That is all I desire to ask.

Redirect examination:

94 452. Int. By Mr. MYERS. Were any other assets exhibited to Mr. Church at the time referred to, than those we have mentioned?

A. I don't know that they were all enumerated. I don't remember that the securities were all enumerated.

Mr. MYERS. Read the question.

(The question was read by the notary.)

A. None which I remember.

453. Int. Were any government bonds exhibited to him?

A. There were not.

454. Int. Are you certain of that?

A. I am certain there were not any by me.

455. Int. Were there not some United States bonds exhibited?

A. I don't think there were, sir.

456. Int. Were not exhibited to Mr. Selby?

A. I think not.

457. Int. Was the company about that time in possession of any United States bonds?

A. Not that I know of.

457½. Int. Were they at any time?

A. Not that I know of.

458. Int. You know nothing of an amount of about $16.000 of United States bonds that had come into the possession of the company from a Mr. Watkins?

(Counsel for defendant objects as incompetent—that it was new matter, and in no way growing out of the examination.)

A. I do not. I never heard anything of them that I now remember.

459. Int. You say you believe that neither of the directors, defendants in this case, appropriated to their own use any of the assets claimed in the bill to be missing. Do you mean to say that you know of your own knowledge what became of those assets? If so, state what did become of them.

A. I do not know.

460. Int. Then your statement amounts simply to the expression of your belief and your opinion that these defendants did not take them?

A. I have an acquaintance with these men that warrants me in saying they would not appropriate securities to their own use not belonging to them. I don't know of my own personal knowledge

95 what became of them.

461. Int. Did Mr. Church's memorandum mention Schuyler County bonds?

A. I don't remember whether it enumerated bonds of the different counties or not. I cannot call to mind the character of that schedule.

462. Int. You say you think the Moberly notes were brought to St. Louis?

A. I think they were.

463. Int. Did you see them?

A. I don't remember. I have seen them.

464. Int. Did you bring them?

A. No, sir.

465. Int. Who brought them?

A. Mr. Langdeau.

466. Int. How did you know he did?

A. I know he brought the real estate securities.

467. Int. Do you know when the company parted with the possession of those notes or either of them?

A. I do not, sir.

468. Int. Have you any information on the subject?

A. I have none.

469. Int. May it not have parted with their possession as well before Mr. Langdeau brought the real estate securities to St. Louis as after, and you have been ignorant of the facts?

A. Such is possible. I cannot state.

470. Int. Who would know just when they left the company's possession?

A. I am not able to say. I don't know whether it was through the executive committee or through the officers—the president and secretary of the company.

471. Int. You say you were the custodian, in general, of the securities of the company?

A. By virtue of the office I held, as secretary.

472. Int. Were you the custodian of the bonds of the company?—A. As much so as other securities.

473. Int. But did you have their actual custody as much as Mr. Melone had it?

A. He had personal custody of them, which I had not.

474. Int. Your possession was an ideal one?

A. I had access to the securities of the company, but I did not
96 personally possess them.

475. Int. You mean to say that Mr. Melone did not remain in the room with yourself and Mr. Church at all, but the moment he came in, at once left?

A. He left soon after; he was not there during the time of those examinations of the securities by Mr. Church, which perhaps covered a period of two hours. Mr. Melone I supposed to be in his bank about ordinary business.

476. Int. Mr. Larrabee, did you ever see or possess a receipt executed by Mr. Melone for any of those bonds?

A. I did, sir.

477. Int. Signed by whom?

A. I think it was signed by Mr. Melone.

478. Int. For which of these bonds was that the receipt?

A. For the Schuyler County bonds?

479. Int. For any others?

A. Not that I remember.

480. Int. Was there any other than that one receipt?

A. Not that I remember.

481. Int. Who possessed that receipt; did you?

A. I had its possession at the time.

482. Int. Who gave it to you?

A. I think it was Judge Barrow. I am not certain.

483. Int. What had Judge Barrow at that time to do with the company?

A. He was attorney for the company.

484. Int. In whose handwriting was the receipt?

A. I don't remember.

485. Int. What amount of Schuyler County bonds did it specify?

A. I don't remember.

486. Int. What is your best recollection on that point?

A. It would specify the amount of $75,000.

487. Int. How did you part with the possession of that receipt, if at all?

A. I have no recollection. I think the receipt I held was a duplicate. I have no recollection how I parted with it, if at all.

488. Int. Do you remember to whom you gave it?

A. I do not.

97 489. Int. Have you got that receipt?

A. I have looked for it since; I am not able to find it.

490. Int. Do you remember the terms of the receipt?

A. I do not, sir.

491. Int. Give its contents as near as you can, the substance of it?

A. I am not able to recollect much about its form.

492. Int. Did it in substance say that he had the possession of the $75,000 of Schuyler County bonds?

A. I think it did. I think it was given in order that we might recognize that amount of bonds in his possession.

(Counsel for defendant objects to the question as leading and incompetent, and objects to the answer.)

493. Int. Did you ever see the other original of that receipt?

A. I don't know that I ever did. I am not certain about its being a duplicate, but I have some recollection about its being marked that way.

494. Int. Why was it delivered to you?

A. I don't call to mind anything that was said.

495. Int. Was it not because you were secretary of the company?

(Counsel for defendant objects to the question as leading.)

A. I supposed it to be given to me as evidence that the company had that amount and character of securities to their use.

496. Int. Did you ever have any conversation with Mr. Melone upon the subject?

A. No recollection of ever having a word with him.

497. Int. Did you go to Mr. Melone's office with Mr. Church?

A. I did.

498. Int. Did you announce to Mr. Melone the object of your visit?

(Counsel for defendant objects to the question as leading.)

A. I did. We met Mr. Melone at the counter and told him we had come to make an exhibit of the securities of the company.

98 499. Int. Then what happened?

A. Melone invited us into the private room in the bank building and brought the bonds in there in person.

500. Int. Was the receipt for these bonds in your handwriting?

A. No, sir.

501. Int. Was it in Judge Barrow's?

A. I am not able to say.

502. Int. Or Mr. Melone's?

A. I don't remember; I could not tell.

503. Int. The only assets of those that I have mentioned that you believe were brought to St. Louis were the Moberly notes, I understand you to say, excepting the $10,000 or thereabouts of Macon County bonds, that were pledged with the Bank of North America?

A. I believe I understand you. Of the securities in question which you ask to be accounted for, I think the Moberly notes were brought here. I think that none others were brought.

Recross-examination by Mr. SHARP:

104. X Int. Among the securities which were exhibited to Mr. Church, was there not a considerable amount of securities exhibited to him and examined by him besides these that the plaintiff is asking to have accounted for here?

A. There was a large list of other securities.

105. X Int. Not being in controversy here, you have not referred to them?

A. There has been no direct reference made to them; they included all securities of the company.

106. X Int. Of which there are a great many besides these in controversy?

A. Certainly there were.

107. X Int. And Mr. Church saw them all?

A. He did.

108. X Int. Were many of those on deposit at that bank?

A. They were not, sir; they were in the office of the company, all except the bonds.

109. X Int. The real estate notes were at the company's office?

A. The real estate notes and possibly a few of the bonds were there also, but I think none. There were marine notes, there were notes taken for premiums, there were agents' balances, cash deposited at different banks, the account of which was had at the office of the company, and not with Mr. Melone.

99 110. X Int. Where were the real estate notes?

A. They were at the office of the company.

111. X Int. And mortgages?

A. At the office of the company.

112. X Int. The receipts that you spoke of a few moments ago for Schuyler County bonds, was that not a receipt or certificate of deposit of the bank?

A. I could not tell you what it purported to be, it was of the character as near as I recollect of a certificate or a receipt designating the Schuyler County bonds.

113. X Int. Did it not purport to be a receipt or certificate of the bank and signed by the cashier as cashier?

A. I don't remember.

114. X Int. Do you remember who it was to in favor of as having the deposit?

A. I think it was Judge Barrow.

115. X Int. That was in relation to those 75 Schuyler County bonds and nothing else, was it?

A. Nothing else.
(Signature waived.)

100 EXHIBIT 7.—G. B.

[North Missouri Insurance Company, Macon, Mo. J. F. Williams, president, A. Larrabee, secretary. Capital, $500,000.00.]

Statement of condition January 1st, 1873.

ASSETS.

State, county, and city bonds	$152,485 00
Accrued interest on same	600 00
Real estate	37,000 00
Loans on bond and mortgages, value $406,510	175,662 26
Interest accrued on same	6,460 99
Loans, call, and time collaterals, $39,700	23,409 42
Bills receivable	3,381 00
Office furniture, Macon, St. Louis, and New York	10,221 73
Cash in bank (certificates)	78,424 90
" in hands of agents	186,650 62
Bills receivable secured	78,807 13
Salvages	575 00
Stock notes subject to call	150,000 00
	$903,678 03

LIABILITIES.

Losses adjusted and due	None.	
Resisted	$6,000 00	
Unadjusted	55,478 18	
		61,478 18
		$842,199 87

Eastern Department, 132 Broadway; I. I. Berne, general agent.

EXHIBIT 8.—G. B.

MACON CITY, *June* 20, '73.

To the board directors of the North Mo. Ins. Company:

GENTLEMEN: I hereby tender my resignation as president of the North Mo. Ins. Co.

101 Very respectfully,

JOHN F. WILLIAMS.

EXHIBIT 9.—G. B.

MACON CITY, MO., *June* 20, '73.

Board of directors North Mo. Ins. Company met pursuant to adjournment.

On motion George P. Glaze by-law No. 1 was amended to read as follows: "At the office of the company at St. Louis." And sec. 6 of article was amended so as to read as follows: "At the office of the company at St. Louis, Missouri."

Isaac Hays tendered his resignation as director of the company; which, after being duly considered, was accepted by the board. Hon. Sol. G. Kitchen, of St. Louis, was then nominated to fill the vacancy in the board, and was unanimously elected.

On motion of George P. Glaze, it was resolved that the general business office of the company be removed to St. Louis, Mo.

On motion board adjourned.

J. M. LOUDON,
Sec'y pro tem.

JOHN I. WILLIAMS, *P. S.*

EXHIBIT 10.—G. B.

[Laclede Hotel, cor. Fifth and Chesnut sts., J. M. Malin, proprietors.]

ST. LOUIS, *June* 21, 1873.

At a call-meeting of the board of directors of the North Mo. Insurance Company, held at their office in the city of St. Louis, and called by William Forbes, vice-president, and acting president in the absence of John F. Williams, the following, among other proceedings, were had, to wit:

Present, Wm. Forbes, vice-president; A. Larrabee, secretary; and George P. Glaze, J. T. Reister, and Sol. G. Kitchen, directors.

102 The minutes of the last meeting were read and adopted.

Resignation of P. T. Holman was read, and on motion accepted. Resignation of J. B. Melone was read and accepted. Resignation of J. M. London was read and accepted.

By ballot, A. M. Britton was elected to fill the vacancy of P. T. Holman.

By ballot, Wm. E. Moberly was elected to fill the vacancy of J. B. Melone.

By ballot, Waddy Thompson was elected to fill the vacancy of J. M. London.

Resignation of Geo. P. Glaze was read and accepted; also resignation of J. T. Reister was read and accepted.

On ballot, B. G. Barrow was elected to fill the vacancy of G. P. Glaze.

On ballot, J. H. Overall was elected to fill the vacancy of J. T. Reister.

On motion, the board adjourned till 10 o'clock a. m., the 23d inst.

A. LARRABEE, *Sec'y.*

EXHIBIT 11.—G. B.

[North Missouri Insurance Company. Capital, $500,000.]

MACON, *June* 20, 1873.

JOHN M. OVERALL, Esq.,
St. Louis, Mo.:

D'R JOHN: Enclosed find minutes of meeting. I was lucky to catch all the directors here. Found Loudon in buggy starting to College Mound; said he did not have time, but we persuaded him to the office and got him to stay until the work was done. In ten minutes after he left I got Col. Forbes' despatch, but he had gone to the college. He is the d——t fellow I ever saw. We got Glaze to go down. I send you resignations of three other members of the board; and if it is thought

best, I can resign and have Col. Kitchen made president at once.
103 Whatever is desirable to be done, I am ready & willing to do.
Yours, &c.,

JNO. F. WILLIAMS.

Do the work quick.

The deposition of Bright G. Barrows, taken before Edmund T. Allen, a United States commissioner in and for the eastern district of Missouri, city and county of Macon, on the 5th day of November, 1875, A. D., on behalf of plaintiff.

BRIGHT G. BARROWS, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, was carefully examined upon interrogatories by Nathaniel Myers, of counsel for plaintiff, and did thereupon depose, testify, and say as follows, viz:

1st. Int. Please state your name, age, residence, and occupation.

A. Bright G. Barrows; age, forty-eight; residence, Macon City, in this county; lawyer.

2d. Int. Were you ever connected with the North Missouri Insurance Company in any capacity?

A. I was connected with the company as a stockholder, attorney, and director.

3rd. Int. When did your connection as director commence?

A. My first appointment was the 21st of June, 1873; the commencement of my official business was on the 23d of June, 1873.

4th. Int. You had not been a director of the company before that time?

A. I never had.

5th. Int. When did your relation as attorney commence?

A. It commenced probably in June, 1873.

6th. Int. And continued until the bankruptcy of the company?

A. Yes, sir; more or less.

7th. Int. You became a stockholder when?

A. First in 1872.

8th. Int. Did you ever continue a stockholder until its bankruptcy?

A. I did, I believe.

9th. Int. Were you in Macon City at the time Superintendent
104 Church was investigating the affairs of the company?

A. I was here at the time it was said he was investigating its affairs.

10th. Int. You did not see him?

A. I saw him here, but not so as to tell exactly what he was doing. I saw him in the office of the company overlooking books.

11th. Int. Do you know of the company's possessing for any time any Schuyler County bonds?

A. I know that Mr. Larrabee had possession, as secretary, for a time, of Schuyler County bonds.

12th. Int. Of what amount?

A. $75,000.

13th. Int. Do you know what became of these bonds?

A. I do.

14th. Int. Please state.

A. They were returned to Mr. Drake, to whom, as I understood at the time, they belonged.

(The last part of the answer objected to by complainant.)

15th. Int. By whom were they returned to Mr. Drake?

A. Do you mean the person who delivered them to him? They were returned to Mr. Drake by me. I having received them from the secretary for that purpose, as the instrument through which they were returned to Mr. Drake.

16th. Int. Were they delivered to you by Mr. Larrabee?

A. I think they were.

17th. Int. Are you certain of that?

A. I cannot state certain that by him personally, but I am satisfied and I know they were delivered to me either by him personally or by his personal direction.

18th. Int. Where were they delivered to you?

A. I could not state positively, but I think they were delivered to me. Well, I can't state as to that point.

19th. Int. What is your impression on that point?

A. Taken in connection with other facts, my impression would be that they were delivered to me by Mr. Larrabee; either by him or some one else at the company's office, though I may be mistaken on that point.

20th. Int. May they not have been delivered to you at the banking-house of Malone and Epperson?

105 A. It is possible that they might.

21st. Int. I will refresh your memory by your former testimony. Do you remember when you were examined at the office of Lucian Eaton, registrar, in St. Louis, that you there stated that they were returned to you at the banking-house of Malone and Epperson by Mr. Malone, and that there was returned to Mr. Malone at the time a receipt which he had given for them?

A. No; I don't remember it that way.

22d. Int. From whom did you get them the first time you had them?

A. The first time I had them I got the bonds—the first I had charge of them I got them from a Mr. Baker.

23d. Int. To whom did you deliver them?

A. To J. B. Malone.

24th. Int. Did you get from him any receipt or certificate at the time?

A. I did.

25th. Int. How was that signed?

A. It was signed either by Malone & Epperson, or J. B. Malone, cashier; special certificate signed in duplicate.

26th. Int. In whose favor was it?

A. It was in favor of Moses Baker, by me.

27th. Int. Did you ever have any other receipt or certificate in relation to those bonds, or see any other?

A. Not that I know of.

28th. Int. Did you ever see any issued by Mr. Malone in favor of the company?

A. I never did.

29th. Int. When was it you first took those bonds to that banking-house?

A. In the spring of 1873.

30th. Int. What month?

A. Probably February.

31st. Int. May it not have been December, 1872?

A. It is possible, but my impression is it was later than that.

32d. Int. Do you know that these bonds appeared in the January, 1873, statement of the company?

A. I do not know, sir.

33d. Int. What did you say to Mr. Malone when you first took these bonds to his bank?

A. I told him I wanted to deposit these bonds for safe-keeping for Baker in the vault.

106 34th. Int. Did you ever speak to Mr. Malone again about these bonds?

A. I presume I did.

35th. Int. What passed between you?

A. I don't remember the language. I could tell you the facts: I presented the certificates of deposits to Mr. Malone, and asked for the bonds. Mr. Malone delivered me the bonds, and I gave him the certificate. What conversations occurred I do not know.

36th. Int. When was that?

A. While Mr. Church was there.

37th. Int. What did you do with the bonds then?

A. I gave them to Mr. Larrabee, the secretary of the company.

38th. Int. And did you get from him a receipt?

A. No, sir; I did not.

39th. Int. For what purpose did you give them to Mr. Larrabee?

A. Mr. Larrabee wanted them to exhibit to Mr. Church.

40th. Int. As what?

A. For the company.

41st. Int. Did you have the consent of Baker and Drake that you might so deliver them to Mr. Larrabee?

A. Yes, sir.

42d. Int. How long did Larrabee keep them?

A. I think about twenty-four hours; not more than that, I think.

43d. Int. Had they been seen by Mr. Church before that time?

A. I do not think they had. I don't know that they had. I don't think Mr. Church had seen them until Mr. Larrabee got them from me.

44th. Int. That was the object of your getting them from Mr. Malone and giving them to Mr. Larrabee that he might show them to Mr. Church?

(Objected to as leading.)

A. I procured them and delivered them to Mr. Larrabee, who desired them for that purpose, and I procured them with the consent of Mr. Baker and Mr. Drake for Mr. Larrabee to use for that purpose.

45th. Int. When you obtained that consent of Baker and Drake, did you give them, or either of them, or any one for either of them, any obligation that they would be returned?

(Objected to.)

A. No.

46th. Int. Nothing?

A. Nothing.

47th. Int. Did you give them your personal assurance that they should be returned?

(Objected to as leading.)

107 A. No; I can't say that I did. I can tell you how it was: Mr. Larrabee assured me that if they would let him use them, on his honor as a gentleman, that they should have them, and I told them that I had no doubt in the world but that Mr. Larrabee would do what he said he would; they were acquaintances of mine and believed it, I presume.

48th. Int. Did Mr. Baker or Mr. Drake have any conversation with any other director or officer, or person interested in that insurance company touching this matter?

A. Not to my knowledge.

49th. Int. Did either of them receive any pay or reward for granting the use of these bonds?

A. Mr. Baker got a suit of clothes for his delay. They delayed over here a day probably to make that accommodation, and Larrabee—I did it by the authority of Larrabee—presented Baker with a suit of clothes.

50th. Int. What Baker was that?

A. Moses Baker.

51st. Int. What did Drake get, if anything?

A. I presented him with a hat.

52d. Int. Was there a John Baker concerned in the transaction?

A. Yes; he was concerned in it also.

53d. Int. What did he get, if anything?

A. Well, I think he got a share of paid-up stock.

54th. Int. Who gave him that?

A. I did.

55th. Int. From whom did you get it?

A. Mr. Larrabee told me to.

56th. Int. By whom was that share signed?

A. By the secretary.

57th. Int. By the president?

A. I don't know who signed it. I was stock commissioner, and was trying to arrange the stock in a different way; that is to say——

(Objected to by complainant.)

to get the stock paid up. To that end there were stock-certificates prepared signed by the secretary and president in the stock book of certificates. I was authorized to fill up the stock; fill up these certificates with the amount of paid-up stock, which was paid.

108 58th. Int. Do you say the certificate J. Baker got was one of these?

A. I think it was, sir.

59th. Int. Do you say so positively?

A. I feel confident it was, but I am not certain.

60th. Int. Were not all your certificates signed by both the secretary and president?

A. I think they were.

61st. Int. Was not that which J. Baker got signed by both the president and the secretary?

A. I think it was, sir.

62d. Int. Who was the president then?

A. John F. Williams. I will state here that I don't think he had any knowledge of the issue of that certificate to Mr. Baker.

63d. Int. Who paid for that suit of clothes?

A. I did in the first instance.

64th. Int. And was the amount refunded to you?

A. Yes.

65th. Int. By whom?

A. Mr. Larrabee, the secretary.

66th. Int. How?

A. In money.

67th. Int. Check or currency?

A. No; it was not a check.

68th. Int. Are you certain of that?

A. Yes; I know it was not a check. I never got a check while the company remained here.

69th. Int. As stock commissioner, did you from time to time report the issue of stock issued by you?

A. I returned the stubs of stock.

70th. Int. To whom?

A. To the secretary.

71st. Int. Did you report to the board?

A. Some of them—that is to say, all of them up to a certain time, up to about December, 1872. I made a report in extenso of what I had done and returned it to the board.

72d. Int. After December, 1872, did you make no report to the board?

A. No special report to the board in session. I reported to the secretary what I did.

73d. Int. Whether your reports were brought before the board, you do not know?

A. I have no knowledge except as to the first that was.

74th. Int. When did you get these Schuyler County bonds from Mr. Larrabee?

A. I think the next day after he got them.

109 75th. Int. When was that?

A. That was in May, 1873.

76th. Int. What part of May?

A. The latter part of May.

77th. Int. Who was with you when you got them from Larrabee?

A. No one that I know of.

78th. Int. Where did you get them from him?

A. I have stated my impression a while ago. I couldn't state certainly whether at the office or down at the bank building.

79th. Int. What did you do with them after you got them from him?

A. Gave them to Mr. Drake.

80th. Int. Do you know what was done with them then?

A. I do.

81st. Int. What?

A. They were sealed up in a package, deposited by him with the agent of the American Express Company in this city, to forward to New York to some gentleman whose name I do not remember.

82d. Int. Was that on the day you got them from Larrabee?

A. It was the same day.

83d. Int. Do you remember about the date of the month?

A. It was about the last of the month.

84th. Int. Could it have been after the 1st of June?

A. No, sir.

85th. Int. Was Mr. Church still in this city?

A. I think not. I think he went away.

86th. Int. Was it the day after he left?

A. I could not state. I don't know the day he left, but my impression was he had gone.

87th. Int. When you got the consent of Mr. Baker and Mr. Drake, as you have stated, did you explain to them why you wished to give them to Mr. Larrabee and what was going on with respect to the company?

(Objected to.)

A. I cannot answer that question because it is in that shape. I can answer the question however in this way: I explained to Mr. Drake the desire of Mr. Larrabee, the purpose of Mr. Larrabee, and the reason why Mr. Larrabee desired them.

88th. Int. What did you tell him was the purpose and the reason?

(Objected to.)

A. I told him that Mr. Church was here, the commissioner for
110 Ohio, making an examination of the company—the North Missouri Insurance Company—with the intention, as Mr. Larrabee had informed me and as we believed, of going through the company and breaking it down unjustly; that Mr. Larrabee desired the use of his bonds to prevent that thing if possible, and of course the idea was to show them to him, exhibit them to him; that was the idea.

89th. Int. Exhibit to Mr. Church?

A. Yes, sir.

90th. Int. How about Mr. Selby, superintendent of Missouri?

A. I don't know anything about him.

91st. Int. Mr. Selby visited Macon after Mr. Church?

A. I think he was here at the same time; that is my recollection; that is, I understood he was. I didn't see him conducting an examination.

92d. Int. Did these identical bonds ever come back into the possession of the company?

A. Never to my knowledge.

93d. Int. You had an intimate acquaintance with the affairs of the company from that time on?

A. Well, I can't say that I did. I sought to some extent to understand the condition of the company, but I can't say that I had even a knowledge of its condition. The reason why is, I was not a director and had no knowledge of its internal workings except what was told me outside, any further than my own personal connection with it.

94th. Int. Did you do any corresponding with reference to the procuring of these bonds?

A. No, sir; had no correspondence with reference to it that I am aware of.

95th. Int. Any with John Baker?

A. Oh, I might have had correspondence with him. I might have mentioned something about them in our correspondence. Him and I were friends and had business correspondence back and forth, and I may have said something to him and he to me in regard to it, but I have no recollection what it was. I thought I had a letter from him when I was at St. Louis and was examined, and I have looked for it.

96. Int. What interested you in procuring those Schuyler County bond' and what moved you to do it? What special reason or action moved you to do it?

A. In what regard do you mean?

97. Int. Who solicited you to do it?

111 A. Mr. Larrabee asked me to do it.

98th. Int. Anybody else?

A. Nobody that I know of.

99th. Int. Was there any gathering of any of the directors, formally or informally, for consultation or discussion, as to what should be done about the time Mr. Church was here?

A. Not with my knowledge.

100th. Int. You never attended any such?

A. No. I had nothing to do with those affairs at all. I was not invited.

101st. Int. You didn't discuss its affairs with any of the officers or directors aside from Mr, Larrabee?

A. There might have been something said about Church, about the examination; might have been something said about that and probably was.

102d. Int. Anything said with reference to what should be done to meet the views of Church or counteract his design in any way?

A. No arrangement or discussion that I know of as to what should be done, except what I tell you with reference to these bonds; there was nothing of that, except between Larrabee and me.

103d. Int. You never mentioned that to any other person—the matter of the Schuyler County bonds—the fact that you had procured the use of them?

A. I presume I did.

104th. Int. What is the fact in regard to that?

A. I have no doubt I mentioned it; there was no secret about it.

105th. Int. To whom?

A. I don't know of any one in particular. Any one who asked about it. Any one who was interested in the company, I would tell them of course.

106th. Int. Were not the directors and officers of the company at that time considerably exercised over the then condition of affairs?

(Objected to as leading and otherwise incompetent.)

A. I don't know hardly how to answer it. I would think that some of them were. I can give it to you only as my opinion. I could only judge by circumstances and appearances; some of them.

107th. Int. Well, which of them?

112 A. I remember Col. William Forbes was one in particular, who appeared to be very much interested in the matter. I think Mr. Hays manifested some interest. Mr. Larrabee did.

108th. Int. How about Mr. Williams?

A. I didn't think he did. I didn't think he manifested as much interest as the case afterwards appeared to have demanded.

109th. Int. How about Mr. Malone?

A. I didn't see any interest at all by him.

110th. Int. Then the interest was manifested not by the officers?

A. Yes, Larrabee was an officer.

111th. Int. But not by the chief officers?

A. Well, Williams was back and forth. I saw him. Circuit court was in session at the time. Mr. Williams was very busy, engaged in court, and that accounts for one reason why he was not down there much of his time.

112th. Int. The court-house was how far from the company's office?

A. Fifty yards or seventy-five.

113th. Int. Mr. Williams's office was in the company's building at that time?

A. I think it was.

114th. Int. Didn't he know what had been done with respect to those (bonds) Schuyler County bonds?

(Objected to as leading and otherwise incompetent.)

A. I couldn't state from my personal knowledge that he did.

115th. Int. Did you and he co-operate in any way in procuring any bonds or stocks for the company about that time?

(Objected to as leading.)

A. I can't state that he did. I will state this, however, in that connection, that after the company had procured by their secretary certain bonds from Griffith, Williams and I were called upon to sign a guarantee for their return in so many days by the company, but we had nothing to do to procure them, and I had no knowledge of the procurement or desire to procure those bonds until they had already been procured.

116th. Int. Where did you and he sign that guarantee?

113 A. Down there, not far from Glaze & Bro.'s store.

117th. Int. Do you mean by that, it was at the bank of Malone & Epperson?

A. I mean by that that it was in the vicinity of Glaze & Bro.'s store; whether it was at the bank, or in the store, or in Richard Malone and Myer's store, or the bank building in front there, I can't state, but it was in one or other of these places. I have thought a good deal about it, and I have not been able to determine yet where it was.

118th. Int. How far from Glaze's store was Malone's Bank?

A. In the same block.

119th. Int. And how far apart?

A. Well, it is about one hundred feet, I think.

120th. Int. Who called on you to sign that guarantee?

A. William Forbes.

121st. Int. Who were present when you both signed it?

A. Larrabee was present. Forbes was present, I think. F. A. Jones was present; I am not certain.

122d. Int. Was any objection made by any of the parties to signing it?

A. No, sir; nothing was said about it at all. They just signed it as a matter of course, it appeared like, and nothing said one way or the other.

123d. Int. How do you mean that you signed it as "a matter of course"?

A. Mr. Forbes said to sign it, and we signed it. That is what I mean.

124th. Int. What time of the day was it?

A. I have no idea.

125th. Int. Where was Mr. Griffith?

A. I don't know where he was.

126th. Int. What reason did Mr. Forbes give for asking you to sign that paper in particular?

A. The reason was, that he and Mr. Jones had got some bonds from Mr. Griffith to use for the company—borrowed same for ten days, and Mr. Griffith wanted some assurance additional to the company's receipt, or the secretary's receipt, or something like that.

127th. Int. Did Mr. Forbes call on any one to sign, or on all who were there?

(Objected to as leading.)

114 A. I don't know as to that. I don't know who all were there.

128th. Int. Do you know what it was that had brought you all together there?

A. I don't know that I could state that; but I knew what Mr. Forbes was doing. I couldn't state how we came to meet there; I don't know.

129th. Int. You were practicing at that time, law?

A. Yes.

130th. Int. You gentlemen, I suppose, were all pretty busy at the circuit court?

(Objected to as leading, and otherwise incompetent.)

A. I was not busy at that time; I didn't neglect my business.

131st. Int. Now, Mr. Williams being busy at the circuit court, what brought you there, if you know?

A. I don't know; I don't know how we came to be there together.

132d. Int. How did it happen you all signed that guarantee?

A. I don't know how it happened. We were asked to do it, and we did it.

133d. Int. You were not personally interested in the matter of securing Mr. Griffith, were you?

A. No.

134. Int. He didn't advance his bonds on the strength of any assurance from you?

(Objected to as leading.)

A. No; I didn't know he had advanced any at that time; didn't know that he had any.

135th. Int. What remark was made about the matter at the time?

A. I think the remark substantially was this, by Col. Forbes: "We have borrowed $14,500 of Griffith's bonds to help us out." Something like that, substantially. "He wants to sign this paper to satisfy him that it is all right." Something like that. "They will be returned." I don't remember the language, it has been so long.

136th. Int. You were not all struck dumb by the proposition?

(Objected to as leading, and otherwise incompetent.)

A. No; we supposed it was all right; had confidence that it was, and that Mr. Forbes wouldn't ask us to do anything that would get us into difficulty or danger, and I simply signed it because I was asked
115 to do it, having confidence in the parties who had the paper and presented it. I might add that it was thoughtlessness more than otherwise, on my part. I am not in the habit of doing such things, I will say that.

137th. Int. How did the others come to sign?

(Objected to.)

A. I couldn't state; because I can't recollect what was said by them, or to them, in particular. It was just a general matter to us that were there.

138th. Int. How long a time was occupied in that matter?

A. Probably five minutes.

139th. Int. What else did you have up for discussion or consideration at that time?

A. I don't remember that I said anything to anybody particularly, or anybody said any particular thing to me about any particular thing. My impression was—I can give you that if you want it.

(Objected to.)

My impression was that Mr. Forbes and some other gentleman, whoever it was with him, I don't know who, were interesting themselves in assisting the company by procuring securities. That was my impression.

140th. Int. That was plain, wasn't it?

A. That was my impression at the time; they didn't say to me what they were doing.

141st. Int. It looked that way, you think?

(Objected to.)

A. Yes; that is what I thought.

142d. Int. Did you ever sign any other obligations than that in respect to any similar matter touching that company?

A. No; not that I know of.

143d. Int. Do you know of any other obligation being given by any one in that regard?

A. I do not.

144th. Int. Have you heard of any, from any of the parties spoken of?

(Objected to.)

A. I can't state that I ever did.

145th. Int. Have you any impression in regard to it?

A. My impression is I did not.

146th. Int. Do you know anything of the procurement of any bonds from a party named Watkins?

A. I have no personal knowledge of it.

147th. Int. Do you know it by statements of any of the parties?

116 (Objected to.)

A. I heard some time after Mr. Church left that there had been bonds procured from Mr. Watkins.

148th. Int. By whom?

A. I don't know who I heard it from.

149th. Int. Did you say you mentioned the matter of those Schuyler County bonds to Col. Williams?

(Objected to as leading, and because the witness has made no such statement.)

A. I did not intend to say so, if I did.

150th. Int. What is your impression as to whether you did or not?

A. I don't think I have any impression on the subject.

151st. Int. Were you instrumental, in any degree or measure, in procuring any other bonds from any other person?

A. Not that I am aware of.

152d. Int. Where did you purchase that suit of clothes for Baker?

A. I don't remember; here in town, some place.

153d. Int. You don't remember the store? Well, there are not very many stores here in the city, are there?

A. Yes, a good many.

154th. Int. Did you deal with more than one?

A. Yes, a dozen of them; where I can get the most for my money.

155th. Int. Did you purchase it at Glaze's?

A. No; he does not keep that kind of stock.

156th. Int. You have no impression as to where you got it?

A. Yes; I have an impression. My impression is, I bought it of Dr. J. E. Wilkerson, from the store of Reister & Wilkerson. I am not certain, however, of this matter of its being their store, but Mr. Wilkerson, I think, sold me the goods. I think that I bought them at the corner store subsequently occupied by Reister & Wilkerson. There has been so many that I am not posted exactly as to who was the owner at that particular time.

157th. Int. You were quite friendly with Col. Williams at the time those transactions were going on, were you not?

(Objected to as leading, and otherwise incompetent.)

A. Ordinarily friendly.

158th. Int. Met daily in the court house, did you not?

(Same objection.)

117 A. Not daily; met occasionally, when business called us together.

159th. Int. Met almost daily, did you not?

(Same objection.)

A. Possibly.

160th. Int. Your offices were but a few feet from each other?

(Same objection.)

A. About one hundred feet apart. My office was on the ground and his was up-stairs. I will state that we were as friendly as lawyers ordinarily are who are in the same town, practicing in the same courts.

161st. Int. You say if any obligation was given to Mr. Watkins, you know nothing of it, and have heard of none such?

A. I don't know that I have heard of any such. I have no knowledge of any such.

162d. Int. Where was the obligation drawn up which you all signed in respect to Mr. Griffith's bonds?

A. I don't know; it was already drawn up when it was presented to us.

163d. Int. Do you know anything of some Adair Normal School bonds of the par value of $350, and of their possession by the company?

A. I know that Larrabee had them, and used them.

164th. Int. And got them from you?

A. Yes, sir. I loaned them to him.

165th. Int. And he returned them to you, did he not?

A. He did.

166th. Int. When?

A. I don't remember when.

167th. Int. Were they not returned to you almost immediately after Mr. Church left Macon?

A. A short time.

168th. Int. Had you owned them for any length of time?

A. Yes, sir.

169th. Int. How long?

A. Quite a while—a year or two.

170th. Int. Is the same true of some Missouri bonds?

A. Yes.

171. Int. They were yours?

A. Yes.

172d. Int. Furnished by you to Larrabee?

A. Yes.

173d. Int. And returned to you?

A. Yes.

174th. Int. I want to ask you whether you mean to have us understand that no remarks were made whatever at the time Mr. Forbes came in and requested the signature of your party to that guarantee?

(Objected to as leading and otherwise incompetent.)

A. I do not so state.

118 175th. Int. What do you want us to understand by that?

(Objected to.)

A. I have told you what I recollect about it.

176th. Int. I still don't understand from you what was said at the time?

A. By whom?

177th. Int. By any of your party.

A. I have told you what Mr. Forbes said, as near as I could. That is all I can remember what was said. There might have been other remarks made by different parties; possibly was.

178th. Int. What is your impression as to whether there was or not?

A. My impression is, judging from natural experience, that there was something said; but what it was I can't remember now.

179th. Int. Was there any discussion among any of the officers or directors as to what amount of bonds would be needed to thwart the designs of Mr. Church?

(Objected to as leading and otherwise incompetent.)

A. Not in my presence or to my knowledge.

Cross-examination by Mr. ALLEN:

1st. X Int. I wish to ask you with reference to the Adair Normal School bonds and the Masonic bonds, as to whose property they were?

(Objected to as calling for the conclusion of the witness, and not the fact.)

A. They were mine.

2d. X Int. I mean at the time they were handed to Larrabee, as you state.

(Same objection.)

A. I gave my own money for them, and never bargained them or gave them away to any one.

3d. X Int. When did you pay for them with reference to this transaction?

A. A year or two before, probably longer. I bought the lodge bonds of the Macon Lodge, and paid the money for them. I furnished property to Adair County for the use of the normal school, for which I received those normal school bonds.

4th. X Int. Did you receive any consideration whatever for those
119 bonds moving from the North Missouri Insurance Company at the time you loaned them to Larrabee, as you have stated, or at any other time?

A. I never did.

5th. X Int. I understood you to say that at the time you were acting as stock commissioner there were placed in your hands stock certificates signed in blank both by the secretary and the president of the North Missouri Insurance Company, and you were authorized as such commissioner to fill in the blanks and issue such stock certificates to such persons as, in your judgment, were entitled to receive them. Is that the fact?

A. That is pretty near so; but it is not exactly that way. That is true with the additional qualification that my judgment as to those entitled to the certificates was governed by the direction and instruction of the secretary, Mr. Larrabee.

6th. X Int. Then, as I understand, it was your province, in connection with Mr. Larrabee, to issue such certificates?

A. Yes, sir; that is what I was instructed to do by him.

7th. X Int. Now, was the share of stock issued to John Baker, of which you testified, issued from those certificates?

A. It was.

8th. X Int. What do you know as to the ownership of those $75,000 county bonds? What had you known of their history?

A. If those bonds that I have been describing are those to which you refer, I will say that they were in the hands of Moses Baker, as trustee for Schuyler County (objected to), as I gathered from him. He delivered them as such to Mr. Drake. I saw it done. Mr. Baker gave them to me to bring them here to deposit in Malone and Jefferson's bank for safe-keeping for him—for Mr. Baker.

9. X Int. And in depositing them there, for whom were you acting, if for any one?

A. For Mr. Baker.

10. X Int. Do you know, from your personal knowledge, what Mr. Baker's interest in those bonds was?

A. I have no personal knowledge. Moses Baker was the treas-
120 urer of Schuyler County. I don't know that I ever had a list of the numbers of the bonds. Moses Baker, as trustee for the county, signed his name to those bonds in my office, and delivered them to Mr. Drake immediately upon signing them. That is all I know in relation to the matter.

Cross-examination by Mr. WILLIAMS:

11th. X Int. Do you know whether Schuyler County had ever issued

any other bonds to the Missouri, Iowa and Nebraska Railroad at the time these bonds were delivered here?

A. I can't say that I do.

12th. X Int. Do you know whether all the parties were present and signed that Griffith guarantee at one time?

A. There were some names signed to it before it was brought there. My impression is that you, and I, and Larrabee signed it there together. That is my impression. I think the balance of the names were signed before it was brought there.

13th. X Int. Was Mr. Jones present at the time or not?

A. I don't think he was.

14th. X Int. Was anybody else present except those parties you have mentioned at the place where it was signed?

A. I couldn't state positively that there was. I recollect those parties.

15th. X Int. Do you recollect what time of the day it was?

A. No.

16th. X Int. How long was it after those bonds had been procured from Griffith, to your best impression?

A. Well, I understood it had been some little time. I don't how long—I don't know when they were got from Griffith.

17th. X Int. Was that guarantee made that you spoke of while Mr. Church was here, or after he left here?

A. I think it was made while he was here—about the time of his going away, I think. I know that he had been here some days, but how long I don't remember. I think it was about the time he left here. My impression is that he was here at the time—only an impression.

18th. X Int. Can you fix what place it was at?

A. No more definitely than I have already; that it was in one
121 of those stores, or in that bank building in front here. I know it was in a front part of the house, by a desk. We signed it on a desk, standing up by a desk at the time.

19th. X Int. You don't know whether any member of the house was present at the time or not?

A. No, sir. Any of the owners of the house as being present, I don't know whether they were or not. If it was in the bank, the officers of the bank were behind the counter. I have no recollection of seeing them in front if they were. I don't think they were. I will state my impression, if you want it, as to where it was. My impression is it was on the south side of the bank building.

20. X Int. Do you mean outside of the building or inside of it?

A. Inside of the bank building; not behind the railway, but in front, next to the window, on a desk that was standing there on the south side. Not at the business desk where the business was done with the bank, but a desk against the wall on the south side, is my impression; on the south side against the south window. Now, in that position, in one of these houses, it was signed. It is my impression that it was signed in that building.

Re-examination by Mr. MYERS:

180th. Int. Was that guarantee signed on the day of its date?

A. I don't know whether it was or not.

181st. Int. What is your impression as to that?

A. I don't what its date is.

182d. Int. Still do you think it was signed on a day different from its date?

A. I have no memory as to that. I have heard that the guarantee was dated on the 21st of May.

183d. Int. Who told you that?

A. Col. Williams. That Griffith said that was the fact.

184th. Int. That is, before your testimony was commenced this evening?

122 A. I asked him about Griffith's testimony, and he told me that the guarantee had been copied, and he told me, as I understood him, that this guarantee was dated the 21st of May, and he asked me when I thought it was signed.

185th. Int. That conversation was before your testimony was commenced here this evening?

A. Yes.

186th. Int. When any of these bonds were returned to you by the company, what consideration, if any, passed from you to the company?

A. I don't understand your question.

187th. Int. When the Schuyler County bonds, or other bonds, were at any time returned to you by Larrabee, or any one else in behalf of the company, what consideration did you give the company for their return?

A. Nothing at all, sir.

188th. Int. Was it your custom to enter on the stubs of the stock issue book to whom the stock was issued, and on what account?

A. There are blanks in the stubs attached to the stock certificates. I numbered on the stub the number of the certificate, the date of the certificate, the parties name to whom it was issued, and the number of shares for which it was issued; and, if it was in substitution of some other certificate which had been surrendered, unpaid certificate, I mentioned the number of the certificate.

189. Int. And suppose it was not in lieu of any former certificate?

A. I had not been in the habit of issuing any any other way. Baker had had an unpaid certificate, and that was surrendered in lieu of that.

190th. Int. And this one hundred dollar certificate was a part of that transaction?

A. He surrendered an old certificate prior to that time.

191st Int. Did he do it in connection with the receipt of the one hundred dollar certificate?

A. Yes. I will state this in explanation of that. I think that Baker got a paid-up certificate for $200. He had already procured a

123 certificate and had paid an amount on it already, and that was surrendered; and he got, I think, a paid-up certificate for $200. Part of it was the old certificate returned, and a part of it was this balance. Part of it was the old certificate and a part of it the reward. I am not certain of that, however.

Signature waived.

The deposition of Byron Griffith, taken before Edmund T. Allen, a United States commissioner in and for the eastern district of Missouri, in the city and county of Macon, on the 5th day of November, A. D. 1875, on the part of the plaintiff.

BYRON GRIFFITH, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, was carefully examined upon interrogations by Nathaniel Myers, of counsel for plaintiff, and did thereupon depose, testify, and say as follows:

1st. Int. State your age and residence.

A. My age is 38 years, and my residence Macon City.

2d. Int. What is your occupation?

A. I have been a railroad man. My occupation at present is loafer, I reckon, as near as I can come at it.

3rd. Int. Are you acquainted with James B. Malone, formerly of the firm of Malone and Epperson, now cashier of the Macon Savings Bank, of this city?

A. I don't know whether he is cashier or not. I am acquainted with Malone that stays in the bank.

4th. Int. J. B., is it not?

A. I don't know his initials. I don't remember them.

5th. Int. Did you receive from Mr. Malone any bonds during the year 1873?

A. Yes; I received some bonds of him. I think it was in the year 1873.

6th. Int. Can you tell what bonds they were?

A. They were Knox County bonds.

124 8th. Int. What amount of Knox County bonds did you receive from him?

A. There were some Macon County bonds, too, I think, in that lot I received.

9th. Int. What amount of Knox County was there?

A. Well, I don't remember; I ought to, too. It seems to me that it was $8,500. I won't be positive about it.

10th. Int. There were 17, were there not, of $500 each?

A. I couldn't say as to that. They were $500 each, but I don't remember how many.

11th. Int. Your recollection is that the aggregate was $8,500?

A. Yes, sir.

12th. Int. What amount of Macon County bonds did you receive from him?

A. $2,500, I think.

13th. Int. Do you know when it was he gave you these bonds?

A. I don't remember. I am a poor hand to remember dates anyhow, and I paid no attention to it. Some time after this article (referring to a paper in his hand) was given to me, some months, but I couldn't tell you about the date. I do not remember.

14th. Int. How long were you, then, out of the possession of them before they were returned to you?

A. No, sir; I couldn't tell you that.

15th. Int. You have no means of giving the date?

A. No, sir; I don't know that I have. I think that it was within six months after they were delivered to me.

16th. Int. Have you any means of ascertaining the numbers of the Knox County bonds?

A. They are on that (referring to a paper in his hands). That is all the means I have.

17th. Int. Can you tell from the numbers on that paper?

A. I couldn't tell you. I didn't take the numbers. All I can tell you is what is on the paper I have.

18th. Int. That paper was delivered to you at the time, was it not?

A. It was delivered to me at the time I delivered the bonds, or a few minutes afterwards.

19th. Int. By referring to that paper you can give the numbers?

125 A. What I have supposed was the numbers of the bonds. I

can refer you to the bonds and find out; some of them are in Macon City; not all of them.

20th. Int. How many?

A. I couldn't tell.

21st. Int. Are they in your control?

A. Yes; some of them *of them* I have disposed of; but there is no doubt these are the accurate numbers of the bonds.

22d. Int. Will you refer to that paper and give us the numbers of the Knox County bonds?

A. Knox County bonds, 10 years, Nos. 86, 73, 70, 56, 65, 66, 67, 68, 69, 71, 72, 74, 75, 77, 78, 83, 96, for $500 each.

23d. Int. Can you give the numbers of the Macon County bonds by reference to that paper?

A. Nos. 1, 2, & 74; that is all I see on here.

24th. Int. Is there not the number 100?

A. Yes; I believe there is. Nos. 1, 2, 74, and 100.

25th. Int. For how much was No. 74?

A. $1,000. I judge it was that; there was one $1,000 bond, and I think it must have been that.

26th. Int. How much were the others?

A. $500 each.

27th. Int. Who was present when Mr. Malone gave you these bonds?

A. I don't remember; there was somebody back in the office. I don't remember whether there was anybody stood outside where I was or not. There was somebody stood inside where he was, but who he was I don't remember.

28th. Int. Were these same bonds ever in the possession of the North Missouri Insurance Company—in its possession?

A. Well, I don't know that, sir.

29th. Int. How is it you don't know that?

A. Because I didn't give the bonds to them. I gave them to General Jones; he fixed these papers for me, and I delivered the bonds to him. I delivered the bonds before these papers were taken; they went back somewhere in behind there, and they came out and gave me these papers that you see.

126 30th. Int. Where did you give the bonds to Gen. Jones?

A. I think it was in the bank.

31st. Int. What bank?

A. In Malone & Epperson's bank.

32d. Int. What part of the bank?

A. Well, I think it was back; there is a room that is back where people sit. I think it was close back to that, that I walked back, and I think they met me; they were done up and I just handed them to Gen. Jones.

33d. Int. Who met you?

A. General Jones.

34th. Int. Who else?

A. Nobody else that I know of.

35th. Int. Forbes?

A. I don't remember whether he was there or not.

36th. Int. Col. Williams?

A. I don't remember.

37th. Int. Judge Barrows?

A. I don't remember whether he was there or not.

38th. Int. Were the papers drawn up there?

A. I suppose they were; they were handed me a short time afterwards.

39th. Int. While you waited there?

A. I think while I sat outside the door, if I remember aright.

40th. Int. Who had spoken to you about these bonds before you delivered them, besides Gen'l Jones?

A. Major Clemens.

41st. Int. J. T. Clemens?

A. I think that is his initials. I don't know.

42d. Int. Who else?

A. I don't know; Forbes might have been with him.

43d. Int. Who else?

A. Gen'l Jones was there, or else saw me afterwards; he was there with him at the time, or soon afterwards; he saw me.

44th. Int. Who saw you?

A. General Jones.

45th. Int. Soon after what?

A. Soon after Major Clemens spoke to me about the bonds. I am not positive whether he was with me at the time or not.

46th. Int. Who else spoke to you?

A. Not any one that I know of. Do you want the conversation we had with reference to the bonds?

47th. Int. Conversations with whom?

A. Well, I suppose the main conversation was with Gen'l
127 Jones—the main conversation, for he was the man relied upon.

48th. Int. What passed between you at the time?

(Objected to by defendants as irrelevant.)

A. Major Clemens, and I don't know who else, came to me and wanted to know if I had any bonds. I told them I had. They wanted to know if they could get them of me for a short time. I told them they could; and they asked me if I could get them right away. This must have been in the forenoon—along about noon, I think. I told them that I could; that they were in the bank. They asked me whose bank, and I told them Tracy's bank; and they asked if I could get them, and I told them I could. They asked me if I could get them and fetch them down to Malone's bank. I went and got my dinner first, and got the bonds and took them down to Malone's bank, and handed them to General Jones. That is about all of it.

49th. Int. Is that all the conversation you had with those parties?

A. That is all I remember particularly about. There may be some other things connected with it.

50th. Int. What bonds did you then give to General Jones?

A. I then gave him the Knox County bonds, the Macon County bonds, some Omaha Township bonds, and some Clark County bonds.

51st. Int. What amount of Omaha bonds?

A. $2,500.

52d. Int. Can you give us the numbers of them?

A. Yes.

53d. Int. I wish you would.

(Objected to by defendants as immaterial.)

A. Nos. 1, 13, 14, 3, 37.

54th. Int. Was it 3 or 34?

A. It looks to me like a 3.

55th. Int. I will ask you to look at it more carefully.

A. (After examining the paper.) Well, it is 34.

56th. Int. The nu nbers, then, are 1, 13, 14, 34, & 37?

A. Yes.
57th. Int. How much each?
A. $500 each.
58th. Int. How many Clark County bonds?
(Objected to as immaterial.)
A. Two.
59th. Int. What numbers?
A. 26 and 98.
60th. Int. How much each?
A. $500.
128 61st. Int. On what day was it you delivered these bonds?
A. I can't tell, sir.
62d. Int. Can you tell by reference to the receipt?
A. I suppose that must be the date. This was delivered to me the same day, May 21st.
63d. Int. What year?
A. 1873.
64th. Int. Do you remember whether there was a Mr. Church, superintendent of the insurance department of Ohio, here at that time?
A. I don't remember.
65th. Int. Did you get a receipt for the various bonds you have stated?
A. I have got what you see here. I think these are the original numbers of these bonds; this is a copy of the agreement.
66th. Int. That is a paper you hold in your hand?
A. Yes, sir.
67th. Int. By whom is that receipt signed?
A. By A. Larrabee.
68th. Int. Individually or as secretary?
A. It is as secretary here, I reckon. I should call it as secretary. It is signed A. Larrabee, secretary.
69th. Int. Are you willing to part with that receipt?
A. No, sir.
70th. Int. Did you ever receive any of the Omaha bonds back?
A. Yes, sir.
71st. Int. Who gave them to you?
A. Judge Barrow.
72d. Int. How many did he return to you?
A. $1,500.
73d. Int. That is all of them, then?
A. No, sir.
74th. Int. All of the Omaha bonds, was it not?
A. No, sir.
75th. Int. I understand that you only mentioned 5 Omaha bonds of $500 each?
A. Yes, sir.
76th. Int. And he returned you $1,500 only?
A. Yes.
77th. Int. Where did he return you the $1,500?
A. In his office.
78th. Int. Who was present?
A. I think the lawyer that is with him there—I can't speak his name—Pope.
79th. Int. Anybody else?
A. Not as I remember.
80th. Int. Was Col. Williams present?
A. No, sir.

81st. Int. Were any of the Clark County bonds returned to you?

A. No, sir.

129 82d. Int. Were any other of these bonds returned to you?

A. Only what I have mentioned.

83d. Int. Referring to the memorandum you have in your hands, do you still say that John F. Williams was not present?

A. Not when the bonds were delivered to me.

84th. Int. Was he present at any time in respect to any negotiations growing out of the return or the original delivery of these bonds?

A. Yes, sir.

85th. Int. When was that, and under what circumstances?

A. Well, I was trying to get my bonds back, and Mr. Williams, here, and Judge Barrow and General Jones were the men I was looking to for my bonds.

86th. Int. Why?

A. Because the other parties I was looking to were not there.

87th. Int. Why were you looking to them at all—that is, to Col. Williams?

A. Because they guaranteed to me the return of these bonds.

88th. Int. When did they do that? When did they guarantee that?

A. May 21, 1873.

89th. Int. Before or after you delivered the bonds?

A. At the time—at the same day; it might have been an hour after I handed over the bonds before I got this paper—not over an hour—maybe not that long.

90th. Int. Now, who guaranteed to you the return of these bonds?

A. F. A. Jones, Wm. Forbes, John F. Williams, A. Larrabee, B. G. Barrow.

91st. Int. Any other person?

A. No, sir.

92d. Int. Now, then, what took place between you and Col. Williams at the time you were about to speak of, when you wanted to get your bonds back?

A. Well, I don't know that I can tell you the conversation. At any rate there was an agreement, the way that I understood it, that Gen'l Jones agreed to furnish *ed* $1,000 of these, of bonds—of that class of bonds, and John F. Williams and Judge Barrow agreed to furnish the balance of them.

130 93d. Int. When you were claiming of Williams the return of your bonds, what took place between you then, as near as you recollect?

A. I couldn't tell you.

94th. Int. Give us as much of it as you can recollect.

A. I don't remember; I have forgotten.

95th. Int. The Col. Williams you refer to is the one who is now sitting by your side, in whose office you now are?

A. Yes; I think it was in this office—right here.

96th. Int. Can't you recollect anything that you said to him, or he said to you?

A. That is all I can remember.

97th. Int. You demanded your bonds from him?

A. Yes, I did; a great many times.

98th. Int. What did he say to you?

A. I don't know which done the saying. I think they were all three here.

99th. Int. What all three?

A. Col. Williams, Judge Barrows, and Gen'l Jones. I won't be right positive whether they were all here or not; there were two of them here, anyhow, and I think the three.

100th. Int. Are you sure Col. Williams was here?

A. Yes.

101st. Int. Can you tell what any person said that was present?

A. I have told you about all I can remember. They came to an agreement here, what they would do between themselves, and I remember this, that Gen'l Jones said he knew when he could get the $1,000, and Williams and Barrows said they would get the balance of them.

102d. Int. So as to make up the bonds to return to you?

A. Yes. I never had any talk with Col. Williams after that at all that I remember of. Judge Barrows met me one day and said he had his'n, and was ready for me, and some time after that I went up and got them, and he delivered them to me.

103d. Int. Now, when you got those bonds back from Malone, what did you give him for them?

A. Mr. Malone—I didn't give him anything.

104th. Int. Did you at any time give him anything for them?

A. No, sir.

131 105th. Int. Did you give the North Missouri Insurance Company anything for them?

A. No, sir.

106th. Int. Or any officer or director of the company?

A. No, sir.

107th. Int. Nothing, then, passed between you and the company by reason of which you got these bonds back to yourself; nothing passed from you to the company?

A. No, sir.

108th. Int. Were the $8,500 Knox Co. bonds and the $2,500 Macon County bonds all returned to you at one and the same time?

A. I think they were.

109th. Int. Did you have any difficulty about getting them back?

A. Yes, sir.

110th. Int. What excuse or reason was given to you when you first demanded them, why you didn't get them back then right away?

A. I do not remember; there were so many excuses about it; so many excuses in reference to it; and—I don't remember; it seems to me I remember somebody telling me they were taken through mistake to St. Louis, and he would attend to it and have them sent back to me.

111th. Int. Was not that in reference to the bonds you never did get back—that were pledged in a bank?

A. No; I think that was before I got any of them back.

112th. Int. Are you clear about that—certain of that?

A. No; I am not clear about that.

113th. Int. You are not clear of anything outside of the papers, are you?

A. Yes, sir.

114th. Int. You are not clear of the details of anything outside of the papers?

A. Yes. I am certain that remark was made to me, but I couldn't be positive who made it.

115th. Int. Nor as to the exact time when it was made?

A. No.

116th. Int. Nor as to the place where it was made?

A. No; I couldn't tell you that. I was pretty warm in reference to

the matter, and did a great deal of talking about my bonds until I got them.

132 Cross-examination by Col. JOHN F. WILLIAMS, on behalf of defendants:

1st. X Int. Do you remember the first time you ever spoke to me about these bonds? Do you remember where it was, and when it was?

A. I don't know as I do.

2d. X Int. Don't you recollect my coming to you one morning on Rotten street, just in front of Glaze's store, in company with Isaac Hays, and asking you if you had a paper with my name on it with others, guaranteeing the return of these—you the return of some bonds, and asking you to let me see the papers, in the fall of 1873?

A. I remember you making to me such a statement. I don't remember when it was.

3d. X Int. State if that was not the first time that any remark ever passed between you and me in reference to your bonds.

A. Yes; I presume it was.

4th. X Int. The first conversation I ever had with you in my life, was it not, except to say "How do you do"?

A. I presume it was. I know I never said much to you in reference to the matter.

5th. X Int. State when that was.

A. I couldn't state.

6th. X Int. State how long it was after the company moved from Macon to St. Louis.

A. I don't know when they left here.

7th. X Int. They left here in June, 1873; how long was it after that time?

A. I don't know, but I should judge it was some time after that. I had got all of my bonds except $3,500 of them. I was trying to see if I could not remember some of the conversation. I remember something about that. I think you made the remark to me that you knew nothing about it until some one had told you so.

8th. X Int. Yes; until Ike Hays had told me so.

9th. X Int. State how many bonds it was you let General Jones have at the time he got those bonds from you.

A. I think it was $14,500.

10th. X Int. State how many of them you got back before this
133 last payment—all except $3,500, did you not?

A. Yes.

11th. X Int. Do I understand you to say that you have got back $1,500 of that $3,500 or $2,500?

A. $1,500. I haven't got the bonds for another $1,000, but I have the collateral.

12th. X Int. Now, I will ask you to state if I didn't state to you at the time I saw that paper that I had no remembrance in the world of ever seeing or of ever signing such a paper?

(Objected to by plaintiff's counsel as incompetent and immaterial.)

A. I think you did.

13th. X Int. State who gave you that paper that has the signature of Gen'l Jones, myself, and others on it?

A. General Jones.

14th. X Int. State, if you know, where he got it from, and who he got it from?

A. I cannot.

15th. X Int. State, if you know, how long after he got the bonds from you before he brought you that paper?

A. Well, I can't tell you that; it was but a little while, though.

16th. X Int. Was it the same day?

A. I think it was the same day.

17th. X Int. Do you know where you were when he gave you that paper?

A. I think I was sitting in the front door of the bank.

18th. X Int. Was any person with General Jones at the time he brought you that paper?

A. I couldn't state—I don't remember.

19th. X Int. State, if you know, what Gen'l Jones did with the bonds after he got them from you?

A. I could not state.

20th. X Int. Did he give you anything for the bonds—any consideration?

A. Nothing but them papers that you see.

21st. X Int. State whether you ever sold the bonds, or parted with the ownership of them, at the time you parted with the possession of them?

A. I never sold them; I had the understanding that they were to be returned to me in ten days; it was merely an accommodation on my part.

22d. X Int. Where was Gen'l Jones when you handed him the bonds?

A. In Malone & Epperson's bank.

23d. X Int. Do you know the real name of that bank at the time of that transaction?

A. No.

24th. X Int. Did you ever know it as the National Savings
134 Bank of Macon?

A. I have heard the name spoken of; but I always called it as the bank of Malone & Epperson; and people always spoke of it in that way.

25th. X Int. Why?

A. Because it was the banking-house originally of Malone & Epperson.

26th. X Int. Afterwards organized into a State savings institution, and named National Savings Bank of Macon, Missouri?

A. Yes; I think it was.

27th. X Int. At the time General Jones got the bonds from you, did he give you that paper you have been referring to here, with the numbers of bonds in, signed A. Larrabee, secretary?

A. Yes; they were both given to me at the same time.

28th. X Int. Was the receipt and the contract both given to you at the same time? I understood you to say that probably one of them was given to you an hour or so before the other one?

A. No.

29th. X Int. Genl. Jones then handed you both of these papers?

A. Yes, sir.

30th. X Int. Now, the conversation to which Mr. Myers called your attention here—that was here (in this office) in the spring or summer of 1875, was it?

A. Yes; I think it was.

31st. X Int. These bonds were delivered to you by Judge Barrow—the $1,500 Omaha bonds were delivered to you in June, 1875?

A. Yes, sir.

32d. X Int. Where is that guarantee, or that other receipt, of which you spoke in your examination in chief, now?

A. I gave it to Col. Gilstrap.

33d. X Int. He has it, has he, in his possession?

A. I suppose he has.

34th. X Int. I will ask you if you didn't first, when you first gave the bonds to Jones, if you didn't first get that receipt from Larrabee, and then afterwards get this guarantee?

A. I think not.

35th. X Int. Why take both instead of one—why did you get the two papers?

A. I don't know; they were given to me.

36th. X int. Who wrote out that receipt—those numbers—
135 whose handwriting is that?

A. I think it is Mr. Larrabee's; I don't know.

37th. X Int. Whose handwriting is the other one in?

A. I think Genl. Jones' handwriting.

38th. X Int. Do you know Genl. Jones' handwriting?

A. I think I do.

39th. X Int. You think this is Mr. Larrabee's—the receipt with the numbers on it?

A. I don't know whose handwriting it is.

40th. X Int. Is the other receipt or guarantee, signed by Jones and others, under your control—where you can get it?

A. It is in court, I reckon.

41st. X Int. Is it where you can get control of it—can you control it?

A. Yes; I suppose I can.

42d. X Int. But it is not in your possession.

Cross-examination by E. T. ALLEN, of counsel for defendants:

43d. X Int. During the day on which these bonds were delivered to you, and this receipt taken, did you see Mr. Forbes, Col. Williams, or Mr. Larrabee, at all?

A. I don't remember.

44th. X Int. Were either of the gentlemen I have just named at the banking-house of Malone and Epperson at the time you were there, when these bonds were delivered?

A. I don't know whether they were there or not; there were some men sitting back there; I don't remember who they were.

45th. X Int. Did you see them?

A. Not as I remember.

46th. X Int. You say you walked back towards that back office?

A. Yes.

47th. X Int. Were you near enough to the back office to see who were there?

A. If I had paid particular attention I suppose I was.

48th. X Int. In the conversation which took place with Clemens and Jones, when they asked you for the bonds, did you stipulate for any guarantee on the part of anybody other than Jones and Clemens
136 that the bonds should be returned to you in ten days?

A. Yes; I says to Clemens, I think it was, they could have them if they would make me safe; and he says "Certainly," either him or Jones, or Forbes, they were the men who done the talking to me.

49th. X Int. What else was said about how they would make you

safe? Did you require of them the names of any particular parties on an agreement to make you safe?

A. Well, I won't be positive about that; it seems to me they did mention some names.

50th. X Int. Whose names did they mention?

A. I wouldn't say.

51st. X Int. This paper that has the numbers on it, signed by A. Larrabee, secretary, was that precisely in the shape it is now except the pencil marks on it?

A. I think it was.

52d. X Int. Was there any more paper on it than appears here?

A. I think not. The paper might have been some cut off of it, but the paper was out of my possession a good while.

53d. X Int. Why do you think there might have been something cut off of it?

A. I don't know that there was. I have no reason to think there was.

54th. X Int. How large a sheet of paper was the guaranty written on?

A. It was the size of a half that of legal cap paper, about.

55th. X Int. Now were there two papers, both handed to you by the same party at the same time?

A. I think there were.

56th. X Int. Did you examine them at the time they were handed you, both of them?

A. I don't remember that. I put a great deal of confidence at that time in General Jones, and he was doing the business for me.

57th. X Int. You have no recollection of looking at either paper at the time it may have been handed you?

A. I presume I looked at the papers.

58th. X Int. I am asking you now what your recollection is?

A. My recollection is that—looked at the papers. My recollection is like this, that the papers were fetched to me open, and explained
137 to me by General Jones; that is my recollection about it.

59th. X Int. Was either of these papers shown to you before you gave up the bonds?

A. No, sir.

60th. X Int. Did you check off the numbers on the receipts, and compare them with the numbers of the bonds?

A. I did not.

61st. X Int. Were the pencil checks over the numbers on this paper when it was handed to you?

A. I couldn't tell you that. I don't remember that. I think they must have been though, for I never have put them there.

62d. X int. Were you at that time acquainted with the handwriting of Forbes?

A. No, sir.

63d. X Int. Of Williams?

A. No, sir.

64th. X Int. Of Larrabee?

A. No, sir.

65th. X Int. Of Barrows?

A. No, sir.

Re-examination by Mr. MYERS:

117th. Int. When you showed the guarantee to defendant Willian s,

and he stated to you he had no recollection of signing the paper, did he deny it was his signature?

A. No, sir.

118th. Int. Did you ever show the paper to any other of the parties?

A. I don't remember whether I ever did or not.

119th. Int. How did that paper read, signed by defendant Williams and others?

(Objected to by defendants.)

A. (Witness reading.) "We, the undersigned, hereby agree and guarantee that the North Missouri Insurance Company shall, within ten days from this date, return to Byron Griffith all the bonds this day borrowed from said Griffith by said company. (Signed) F. A. Jones, Wm. Forbes, J. F. Williams, A. Larrabee, B. G. Barrow. (Dated) May 21, 1873."

120th. Int. When defendant Malone returned to you the Knox County bonds and Mason County bonds, as you have stated, did he endorse the fact on any paper?

A. He endorsed it on the original paper—this is a copy of it.

138 121st. Int. On the guaranty or on Larrabee's receipt?

A. On the guarantee on the original that is now in court at Laplata, or in the hands of my lawyer.

122d. Int. What did he endorse on that paper?

(Objected to as incompetent.)

Can you tell by reference to that paper?

(Objected to as incompetent.)

A. He endorsed so many bonds delivered to me—delivered to Griffith 500 Knox County bonds, 2,500 Mason County; that can't be right; that 500 can't be right, because it is not enough.

123d. Int. How much did he give you?

A. I don't remember; I think altogether $8,500.

124th. Int. Had Malone seen this guaranty before that time?

A. Not as I know of; the business was done there in the banking-house; whether he saw it or not, I don't know.

125th. Int. Will you read the receipt Larrabee gave you?

A. "Received of Byron Griffith the following bonds, May 21, 1873, to be returned with' ten days;" then follows the description of the bonds, and the signature I have mentioned, "A. Larrabee, sec."

126th. Int. You say you loaned these bonds only as an accommodation? You knew or understood at the time that the company was in some little trouble?

A. I don't know whether it was at that time or afterwards. I know I heard of it, but I think it was after that time.

127th. Int. And it was to help it that you loaned the bonds?

(Objected to as leading and as otherwise incompetent.)

A. I didn't know where the bonds were going at the time.

128th. Int. Do you remember being examined in this matter by Mr. Walker, in Macon City, some time ago—about a year ago?

A. I know I was examined by him. I don't remember when—some time ago, though.

129th. Int. Did you state then your impression was that when these parties asked you for the use of the bonds, that they wanted them for the use of the North Missouri Insurance Company?

(Objected to as incompetent.)

139 A. I presume that was my impression. I am not positive about it.

130th. Int. You said you could explain the pencil memorandum on that receipt?

A. I think this receipt was *got* to me by Forbes. Forbes came to me, and asked me if I had the numbers of those bonds; he asked me to give him this paper, and he would send it down for them; he sent it down, and I never got it back until months afterwards—until Mr. Howe came back here; he gave it to me.

131st. Int. What is that pencil memorandum?

A. I don't know.

132d. Int. Can you read it?

A. Yes.

133d. Int. Do so, please.

A. 74 is $1,000.

134th. Int. I mean the pencil memorandum on the margin?

A. Oh, here.

135th. Int. Yes, sir.

A. I can't read it. "Send order for those in bank at once."

136th. Int. Do you know in whose handwriting that is?

A. No, sir.

137th. Int. You say you had a conversation with defendant Williams in the summer of 1875. What was that about?

A. About getting some of those bonds returned that had not been returned to me. I reckon it was the Omaha bonds and Clark County bonds. They agreed to turn me back the Omaha bonds.

138th. Int. And did they?

A. Yes, as I have stated before.

139th. Int. What was the collateral?

A. It is $1,500, and I don't know how it is—Constructions Company or something.

140th. Int. Bonds or stock?

A. Stock, I think.

141st. Int. Who gave it to you?

A. General Jones.

142d. Int. You say when Jones, Clemens or Forbes asked you for the bonds originally, you told them you wanted to be made safe. Did you agree to accept their obligation?

A. No, sir.

143d. Int. Did you specify that you wanted something more than their agreement; if so, what did you say?

A. I don't know what I said.

144th. Int. What did you mean by wanting to be made safe?

A. Well, I don't know what I did mean—some kind of security I suppose I must have meant.

145th. Int. Were you in any way paid for this loan?

A. I never received a dollar or a cent in any way only by mistreatment. I have been mistreated about it.

146th. Int. No stock?

A. No stock or anything.

147th. Int. Mistreated by whom?

A. By the parties who signed this guaranty.

148th. Int. You say Jones was acting as your attorney?

A. Yes.

149th. Int. You didn't pay him as such; did you?

A. No; Jones was a man I had a great deal of confidence in, and I took it for granted that it was done right. I had that much confidence in him. I suppose I would have taken that article if there had not been

so many names on it, because I had no idea of any trouble about it at all.

(Signature waived.)

The deposition of Wm. F. Church, taken before James T. Allen, a notary public, in and for the county of St. Louis, State of Missouri, in the city and county of St. Louis, on the 18th day of October, 1875, on behalf of the complainant.

WM. F. CHURCH, being about the age of years, and having been by me first cautioned and sworn to tell the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, was examined, and he did thereupon depose, testify, and say as follows:

Examined by Mr. WALKER:

1st. Int. What is your full name, residence, and occupation?

A. William F. Church. At present, residence in Cincinnati. My occupation is an adjuster of claims of losses of insurance companies.

141 2nd. Int. What was your occupation in the year 1873?

A. I was superintendent of insurance of the State of Ohio.

3rd. Int. During all of that year?

A. All of that year.

4th. Int. Were you, as such superintendent of insurance, authorized by law to make examinations into the financial condition of insurance companies doing business in the State of Ohio?

A. I was when I suspected unsoundness.

5th. Int. Was it your duty to make annual examinations?

A. The law don't make it that.

6th. Int. Then it was your duty to make examinations whenever you suspected the unsoundness of any company?

A. Yes, sir.

7th. Int. Did the North Missouri Insurance Co. do business in the State of Ohio?

A. They did.

8th. Int. For how long a time?

A. They were in the State at the commencement of my term; I don't remember how much longer.

9th. Int. When did your term commence?

A. The 3rd of June, 1872.

10th. Int. Up to what time did they continue to do business?

A. Their authority was revoked; it was published, I believe, the 31st of May, 1873.

11th. Int. And they transacted business in Ohio between those two dates you have mentioned?

A. Yes, sir.

12th. Int. Did you, pursuant to the authority vested in you by the laws of Ohio, proceed to Macon, Missouri, the home office of the North Missouri Insurance Co., to make an examination into the financial condition of that company?

A. I did.

13th. Int. When did you go to Macon to make this examination?

A. It was in May, 1873.

14th. Int. To whom did you address yourself when you went to Macon for the purpose of making this examination?

A. To the secretary, Mr. Larrabee.

15th. Int. What did you state to him?

A. I stated to him the object of my visit, which was to examine the financial condition of the company.

16th. Int. Did you then proceed to make that examination?

A. did.

142 17th. Int. Did you as a part of the examination demand to see the securities and assets of the company?

A. That was my application.

18th. Int. Was that demand complied with?

A. It was.

19th. Int. Can you state from memory what securities were shown to you as assets of the company?

A. I could not give the details.

20th. Int. Are you able to state by reference to any memorandum then made what securities were shown to you as assets of the company?

A. I am able.

21st. Int. Have you those memoranda with you?

A. I have them.

22nd. Int. Please read from the memorandum what securities were shown to you as assets of the company?

(Counsel for defendants objected to the question as incompetent.)

A. Mortgage loans, face value, $181.452.26, which includes a note of William E. Moberly, dated January 22d, 1873, for $27,000, payable two years after date, ten per cent., secured by deed of trust on Livingston County land, recorded in vol. 11, page 249; on which note is a credit of $13,500, which credit being deducted from the $181,452.26, leaves $167,952.26 for mortgage loans. Personal notes, not premium, without security, $1,594.33; collateral notes—I mean by these, notes secured by collateral security, as hereinafter mentioned.

William E. Moberly's note, dated January 22d, 1873, payable two years after date, ten per cent., secured by North Missouri Insurance Company stock to the amount of $27,000,

William A. Keyser's note dated May seventh, 1873, four months, $2,500, secured by North Missouri Insurance Co. stock $6,500.

W. J. Dougherty's note, sixty days, dated August 21st, 1872, $5,000; also his note dated December 16th, 1872, for $5,080.53, both secured by North Missouri Insurance Company stock to the amount of $10.000.

F. A. Jones' note, dated January 2d, 1873, $750.00, represented cash note.

Cash on hand represented $80.03.

143 Balance due from National Savings Bank, Macon, $2,339.72.

BONDS.

Adair Co., Mo., bond No. 33, $100; interest, 7%, paid to March, '71.
" 45, 50; " "
" 34, 100; " "
" 54, 50;

Making a total of $300 Adair County bonds.

Also Knox County Railroad bonds as follows:

No. 77, $500, 10 years; int. annual, 7%, paid to date.
" 78, $500, " " " " " " " "
" 83, $500, " " " " " " " "
96, $500, " "
56, 500,

70, 500,
73, 500,
76, 500,
65, 500,
66, 500,
67, 500,
68, 500,
69, 500,
71, 500,
72, 500,
75, 500,
74, 500,

Making in the aggregate $8,500 Knox County bonds.

Also the following Burlington & Southwestern Construction Railroad bonds, 25 years:

No. 84, $1,000; interest, 7% gold; Oct., 1872; 2 coupons unpaid.

83, 1,000.	997, 1,000.	88, 1,000.
1,000, 1,000.	996, 1,000.	87, 1,000.
144 999, 1,000.	800, 1,000.	86, 1,000.
998, 1,000.	89, 1,000.	85, 1,000.

Making $13,000 in the aggregate.

Also the following Macon County bonds, 5 years:

No. 100, $500, due Nov. 1, 1872; int. 6%; last coupon unpaid $30.00.
1, 500, last coupon paid; due Nov. 1, 1872.
2, 500, last coupon paid.

Also the following Macon County bonds, 6 years:

No. 102, $500.	105, 500.	131, 500.
" 103, 500.	106, 500.	128, 500.
104, 500.	101, 500.	

Also the following Macon County bonds, 5 years:

No. 2, $1,000.	18, 50.	96, 50.
74, $1,000.	16, 50.	95, 50.
23, 50.	15, 50.	98, 50.
20, 50.	13, 50.	27, 50.
19, 50.	12, 50.	26, 50.

145 Making $8,200 in the aggregate of Macon Co. bonds.

Also, Macon Co. railroad bonds, 15 years, as follows:

No. 34, $500.	31, 500.	5, 500.
37, 500.	32, 500.	38, 500.
1, 500.	7, 500.	6, 500.
13, 500.	2, 500.	9, 500.
14, 500.	4, 500.	8, 500.
33, 500.	3, 500.	

Making $8,500 in the aggregate of 15-year Macon County bonds.

Also, the following bond of the town of Memphis, co. of Scotland, No. 27, $1,000, 3 per cent., 20 years.

Also, the following Clark County, Mo., Alexandria & Nebraska Railroad Co. bonds, 20 years: No. 149, $500; No. 145, $500; No. 146, $500.

Also, the following Alexandria & Bloomfield Co. Railroad bonds: No. 26, $500; No. 98, $500; making $2,500 in the aggregate of Clark Co. bonds.

Also, Schuyler County, Missouri, railroad bonds, 20 years, as follows:

No. 11, $1,000.	13, 1,000.	14, 1,000.
12, 1,000.		
146 No. 15, $1,000.	27, 1,000.	116, 1,000.

16, 1,000. 127, 1,000. 115, 1,000.
17, 1,000. 126, 1,000. 3, 1,000.
18, 1,000. 125, 1,000. 4, 1,000.
19, 1,000. 124, 1,000. 5, 1,000.
20, 1,000. 123, 1,000. 6, 1,000.
21, 1,000. 122, 1,000. 7, 1,000.
22, 1,000. 121, 1,000. 8, 1,000.
23, 1,000. 120, 1,000. 9, 1,000.
24, 1,000. 119, 1,000. 10, 1,000.
25, 1,000. 118, 1,000. 148, 1,000.
26, 1,000. 117, 1,000.

147 No. 2, 1,000. 139, 1,000. 128, 1,000.
1, 1,000. 138, 1,000. 107, 1,000.
150, 1,000. 137, 1,000. 106, 1,000.
149, 1,000. 136, 1,000. 105, 1,000.
147, 1,000. 135, 1,000. 103, 1,000.
146, 1,000. 334, 1,000. 104, 1,000.
145, 1,000. 133, 1,000. 108, 1,000.
144, 1,000. 132, 1,000. 109, 1,000.
143, 1,000. 131, 1,000. 110, 1,000.
142, 1,000. 130, 1,000. 111, 1,000.
141, 1,000. 129, 1,000. 112, 1,000.
140, 1,000.

148 No. 113, 1,000. 114, 1,000.

Making $75,000 in the aggregate of Schuyler Co. bonds.

Also, Macon County railroad bonds, 15 years, as follows:

No. 15, $500. 42, 500. 65, 500.
79, 500. 40, 500 62, 500.
78, 500. 37, 500. 46, 500.
12, 500. 24, 500. 61, 500.
13, 500. 59, 500. 48, 500.
15, 500. 56, 500. 45, 500.
16, 500. 67, 500. 21, 500.
17, 500. 43, 500. 47, 500.
18, 500. 44, 500. 32, 500.
80, 500. 66, 500.
25, 500. 64, 500.

149 No. 58, $500. 23, 500. 52, 500.
50, 500. 31, 500. 49, 500.
No. 60, 500. 69, 500. 38, 500.
68, 500. 36, 500. 53, 500.
57, 500. 26, 500. 51, 500.
34, 500. 27, 500. 63, 500.
35, 500. 28, 500. 22, 500.
30, 500. 54, 500. 25, 500.
33, 500. 41, 500. 127, 500.
29, 500. 39, 500.

Making in the aggregate $30,000 Macon Co. 15-year bonds.

Also, a Mason lodge bond, 10 per cent., $100, dated Sept. 1, 1869.

Also, a bond of the town of Carrollton, Carroll County, board of education, $100, ten per cent. school bond.

Linneus school bond, Linn County, Missouri, $240.00.

Also, Mound City Mutual Life Insurance Co. certificates; No.

150 100, $5,000; No. 86, $5,000.

Also, Missouri and Mississippi Railroad Company stock; certificate No. 281, 200 shares, $20,000; certificate No. 7, 10 shares, $1,000.

Also, premium notes amounting in the aggregate to $78,756.36.

23d. Int. Was the list of securities which you have just read made out by you at the time in the course of said examination?

A. That memorandum was made after this manner: the securities that represented indebtedness, or anything of the kind, were handed to me and I examined them and read the details to the clerk or my assistant. My assistant was there with me, and it was written down.

24th. Int. It was partly made by yourself in your own handwriting?

A. I don't think my handwriting appears there at all. It was taken down, my customary way, by the clerk.

25th. Int. Are you satisfied that you saw all the securities and examined them, mentioned on the list?

(Counsel for defendant objected to the question.)

A. I examined the securities which I read off to the clerk.

26th. Int. You examined the securities and read off?

A. That were read to him and entered here.

27th. Int. Do I understand that you personally saw each individual security mentioned in that list?

A. I did.

28th. Int. Who exhibited these securities to you upon that occasion?

A. Mr. Larrabee, or he caused them to be exhibited. My business was with Mr. Larrabee.

29th. Int. In what place or places did you see those securities when they were thus exhibited?

A. At the office in Macon.

30th. Int. The office of the company at Macon?

A. Yes, sir; and some were shown to me in the bank.

31st. Int. In what bank?

A. I don't know the name of the bank there. I guess there is only one. I could not tell. I did not retain the name of the bank in my mind. I have the balance at the National Savings Bank, and I think that is the one.

32d. Int. Can you distinguish between those assets that were
151 shown to you in the company's office and those that were shown to you at this bank?

A. I did not make any memorandum distinguishing between the one and the other.

33d. Int. Can you state generally the character of the assets that were shown to you at the bank, whether they were notes secured by deed of trust, or whether they were bonds?

A. They were bonds.

34th. Int. Do you mean you saw the bonds at the bank?

A. Yes, sir.

35th. Int. Were all the bonds mentioned on the list given above shown you at the bank?

A. Not all at the bank. I believe not.

36th. Int. Can you state which of them it was which were shown to you at the bank—which class?

A. No, I cannot.

37th. Int. Can you state whether any considerable amount of bonds were shown to you at the bank?

A. Yes, sir; a number of thousand dollars, but I cannot tell how many.

38th. Int. You have referred to $75,000 of Schuyler Co. bonds; can you state whether you saw them at the bank?

A. It is my impression those were at the bank.

39th. Int. Can you recollect any of the others that you saw at the bank?

A. No, sir.

40th. Int. Who was present in the bank when those things were exhibited to you?

A. There was one gentleman, but I can't remember his name.

41st. Int. Do you know if he was an officer of the company?

A. I understood him to be, or an official of the bank.

42d. Int. Was Mr. Larrabee present?

A. I don't think he was during the taking of them altogether. He introduced me to the bank.

43d. Int. He took you to the bank?

A. Yes, sir.

44th. Int. Introduced you to the bank officers?

A. Yes, sir.

45th. Int. Do you remember what Mr. Larrabee stated to the bank officers?

A. No, sir.

46th. Int. What was the purpose of his taking you to the bank?

152 A. The purpose was to show additional assets to what he had given.

47th. Int. Assets of the North Missouri Insurance Co.?

A. Of the company, yes.

48th. Int. Were those bonds that you saw at the bank handed to you by this bank officer?

A. Yes, sir.

49th. Int. In what condition were they; were they loose or in a package?

A. I think they were in a bundle together.

50th. Int. Bundle together?

A. I think so.

51st. Int. What assurance, if any, were made to you that those were the assets of the company? I refer to the bonds that you saw in the bank.

(Counsel for defendant objected to the question as incompetent and leading.)

A. Those were handed to me upon my application to see the assets of the company.

52d. Int. Handed to you by whom?

A. By Mr. Larrabee. You are speaking of the bank now?

53d. Int. Yes.

A. Those were handed by the gentleman in the bank.

54th. Int. Did he make any assurance to you that those were the property of the company?

A. It is so long I can't remember the conversation.

55th. Int. Was any other person present at that time?

A. I don't remember any other one present.

56th. Int. In what part of the bank did this take place?

A. It was in the back room.

57th. Int. Did this bank official wait in the room with you till you looked over the bonds?

A. He did.

58th. Int. Were you introduced to this bank official by Mr. Larrabee as Mr. Church, superintendent of insurance of Ohio?

A. As I said before, I can't remember the conversation. I can simply say I was introduced.

59th. Int. You don't remember if the object of your examination was stated?

A. I don't remember the exact language.

60th. Int. Do you remember whether the object of your inspection of the bonds was stated to this bank official?

153 A. I remember we applied there for additional assets, as I stated before, and was introduced, and they were furnished.

61st. Int. After you examined the bonds at the bank, to whom did you return the bonds?

A. To the bank official; left them there.

62d. Int. His name you don't remember?

A. I don't remember.

63d. Int. Now, in regard to the bonds and securities other than those shown you at the bank, do you recollect in whose presence they were exhibited, or by whom they were exhibited to you?

Well, they were exhibited in the presence of whoever happened to be in the office. We were not private at all. I don't remember the names of the employees; could scarcely recognize them.

64th. Int. Can you state whether all of the assets described in the list you have given were exhibited by officers of the company to you, or under the direction of officers of the company?

A. It was all under the general direction of furnishing the assets of the co. for examination.

65th. Int. And they were so furnished, were they, in compliance with your demand to see the assets of the company?

A. Yes, sir.

66th. Int. In the course of your examination on that occasion, were any other representations made to you as to the assets of the company by the officers of the company, and, if so, by whom?

A. I don't remember any representations, only such as appeared by exhibiting the assets.

67th. Int. I am speaking of other assets than you have mentioned?

A. Well, they represented they had real estate.

By Mr. SHARP:

68th. Int. Represented by whom?

A. There is nothing else that I remember.

69th. Int. Mr. Larrabee?

A. Mr. Larrabee and the employees. I explained it was a long process to get at the premium notes, and they were read off by the clerks.

Mr. WALKER:

70th. Int. I will call your attention to this: Did Mr. Larrabee
154 or any other officer of the company make any representation to you concerning the balance due by agents; and, if so, who made those representations?

A. Yes; they represented——

By Mr. SHARP:

71st. Int. Who?

A. I would be referred to the bookkeeper.

By Mr. WALKER:

72d. Int. By whom?

A. Mr. Larrabee was the man. I don't remember the name of any other individual.

73d. Int. What representations were made by the bookkeeper under the direction of Mr. Larrabee? I refer to the agents' balances—the balances due by agents.

(Counsel for defendant objects to the question as incompetent.)

A. I would like to understand representations; as to the value or as to the existence of them?

74th. Int. As to the existence and value too?

A. I will say as I said before; they were all exhibited under the general direction of Mr. Larrabee.

75th. Int. What amount was stated as to the balance due by agents?

(Counsel for defendant objected to the question as incompetent.)

A. They did not make any statement as to the amount.

76th. Int. Will you refer to your memorandum?

A. I referred to the books. I had the books to examine to ascertain the balances.

77th. Int. What was the result of that?

(Counsel for defendant objected to the question as incompetent.)

A. (Refers to book.) Agency balances appear to $59,593.93.

78th. Int. Did Mr. Larrabee or any of the other officers of the company, and if other officers, name the individuals or individuals, make on that occasion any representations as to South Carolina bonds being owned by the company?

(Counsel for defendant objected to the question as incompetent.)

A. They did; they represented——

By Mr. SHARP:

79th. Int. Who did?

155 A. Mr. Larrabee. As possessing South Carolina bonds, $10,000; North Carolina bonds, $23,000.

By Mr. WALKER:

80th. Int. Were any other representations made to you in the same manner or by the same person as to other assets the company owned?

(Counsel for defendant objected to the question as incompetent.)

81*st. Int.* Now I will explain. There appeared due them from agencies not included in the agency balance—I will explain to you and you will understand it. The agents would make daily reports, and would not make up their accounts till the end of the month, and from the daily reports I found out the increase in premiums. The agents would make insurance and report the insurance to the company. Then these reports would stand all expenses. The gross amount of these premiums not counted in the agency balance was $45,782.82. To make it as net I took off 33⅓ per cent.

82d. Int. For expense?

A. Yes, sir; leaving then, as I estimated, only $30,521.

83d. Int. In addition to the $59,000?

A. Yes, sir.

84th. Int. Any other representations?

A. They represented—I mean Mr. Larrabee—as owning real estate. It was represented as follows: Lot and building in St. Louis, estimated $23,000; lot in Macon City; one-half interest in north wall of building occupied by the company, on which they paid $2,500; lot and building in Macon City, $1,250; again building occupied by the company, owned, $9,000, making in the aggregate $35,750.

85th. Int. Was anything said about Howard County real estate in the same way?

A. They represented to hold real estate in Howard Co. estimated $5,000.

86th. Int. Howard County, Missouri, was it?

A. That is the way I have it; Howard County.

By Mr. SHARP:

87th. Int. What are you reading from when you answer these questions?

A. I am reading from a memorandum which I made during the examination.

156 88th. Int. Did you make them?

A. I made this.

89th. Int. And those others you have read from?

A. Those others I will explain.

90th. Int. Did you make this memorandum?

A. This Howard County is in my own handwriting.

91st. Int. In regard to the lot in St. Louis and Macon City?

A. I think that is my handwriting.

92d. Int. Did you make that entry?

A. Yes, sir.

93d. Int. And as to the amount in the hands of agents besides the $50,000; did you make those entries that you are reading from?

A. That was a result.

94th. Int. Did you make those entries?

A. I made the examination. I will look and see if I made the entry. (Examines book.) I made it at the time.

By Mr. WALKER:

95th. Int. In regard to the notes enumerated in the list you have given, in whose favor were those notes?

A. Which notes do you mean; premium notes?

96th. Int. The whole notes. You have described a number of notes.

A. I have read off the details of the notes payable to the North Missouri Insurance Company, except in two cases; they were payable to Wilkerson. If you will tell me which note you refer to.

97th. Int. I want to get at all the notes. Now, for instance, you say William E. Moberly, payable so and so?

A. I will refer to the memorandum. I did not state in the memorandum any further details than the date and amount and interest.

98th. Int. I ask you now to whom those notes were payable that you mentioned.

A. I stated I did not make such a memorandum.

99th. Int. I ask you if you remember whether in favor of the North Missouri Insurance Company or not?

A. I can't remember any more than what my notes indicate.

157 100th. Int. If they had been payable to some other company or some other individual other than the North Missouri Insurance Co., would you not remember that and have rejected the matter as an asset?

A. They might have been transferred & made an asset.

101st. Int. In whose favor, either by original making or by endorsement?

A. I can't state anything further than I have stated on it. You refer to the notes for which there was collateral security?

102d. Int. I refer to all notes; the premium notes as well.

A. The premium notes were payable to the North Missouri Insurance Company.

103rd. Int. I will call your attention to the mortgage loans.

A. It is purely inferential. My impression is they were payable to the North Missouri Insurance Company.

104th. Int. And so with the notes?

A. As I remember it.

105th. Int. Now you state that all the securities that were exhibited to you were either exhibited to you at the banking house or at the office of the company at Macon?

A. Yes, sir.

106th. Int. Was any representation made to you by any one on behalf of the company, as to what the market value was of the bonds you have enumerated; and, if so, by whom were the representations made?

A. They were represented by Mr. Larrabee.

107th. Int. The secretary?

A. The secretary; that they were worth eighty cents. I figured 80 cents on $168,000.

(Counsel for defendant objected to the foregoing testimony.)

108th. Int. Then Mr. Larrabee represented to you that these bonds were worth 80 cents on the dollar?

A. Yes.

109th. Int. Did any one besides Mr. Larrabee make any representations as to the market value of the bonds?

A. I don't remember any.

110th. Int. Did the bank official above referred to make any?

A. I don't remember that he did.

158 Cross-examination by Mr. SHARP:

1st. X Int. Had the book accounts of the company which you inspected been inspected prior to the time that Mr. Larrabee took you to the bank?

A. Previous to going to the bank.

2d. X Int. Had the securities that were shown you by Mr. Larrabee at the company's office been shown to you and inspected before you went to the bank?

A. We did up the work at the office first; I think that was the last work that was done at the bank.

3rd. X Int. Mr. Larrabee, as I understood you, took you to the bank?

A. Yes, sir.

4th. X Int. For the purpose of showing you some securities?

A. Yes, sir. Well, it might have been also to examine balances, but I think it was all to show the securities.

5th. X Int. Before you went to the bank was any memorandum or list of the securities that he proposed to exhibit to you at the bank shown you by Mr. Larrabee?

A. I think not.

6th. X Int. No statement made by him of what they were?

A. I think not. I don't remember any—I did not take any memorandum.

7th. X Int. Did Mr. Larrabee speak of any amount of securities which he proposed to show to you there in the nature of securities?

A. I don't remember it.

8th. X Int. Or the nature of them, or character of them?

A. I can't say whether he said they had bonds there. I don't remember whether he said anything about it.

9th. X Int. Your only recollection is that he took you to the bank for the purpose of showing you some other securities?

A. That is the way I remember it—yes, sir.

10th. X Int. When you went into the bank did you go into the main bank building—the main bank room first?

A. No; I think we went into the back door as I recollect it.

159 11. X Int. You did not go into the main bank?

A. I am not confident of it.

12th. X Int. That you were not in the bank at all?

A. I think we went in after bank hours, and went in through the back door.

13th. X Int. And you stopped in the small office, did you?

A. Yes, sir.

14th. X Int. Did not Mr. Larrabee bring into that small office himself in his own hands, a package containing securities which he exhibited to you there?

A. Well, sir, it is quite difficult for me to say, but my impression is it was furnished by the bank officer, whoever he was.

15th. X Int. Did Mr. Larrabee not bring them into the office where you were and place them on the table?

A. It is possible he may have done so. It did not make any impression on my mind scarcely at all.

16th. X Int. How long were you engaged there at looking at these securities before you at the bank?

A. I don't know how long. It took quite a little time to take them down.

17th. X Int. One or two hours?

A. Well, I should think it was after four o'clock when we went there. I guess we worked as long as we could see. I don't remember.

18th. X Int. It would be probably from one to two hours?

A. I can't tell how long it took.

19th. X Int. I only want you to give us some idea, whether it was fifteen minutes or an hour or two?

A. I should say one hour at least.

20. X Int. Of course I don't expect that matters of that kind are so impressed upon your mind that you can give it with any particularity, but merely some approximate idea.

A. I should think it took an hour certain.

21st. X Int. Did not Mr. Larrabee remain in that room with you during the time or a good portion of the time you were taking down the securities?

160 A. My recollection is indistinct about that. I can't be clear.

22d. X Int. What I wish to ask is this: will you state that any bank official, or any one else besides Mr. Larrabee, was present with you during the time any of these securities were being taken down?

A. I will have to think it over before I can tell, or I might not be correct; whether the bank official was there during all the time or part of the time, or whether Mr. Larrabee was there all the time or part of the time, I could not tell.

23rd. X Int. I am trying to bring it to your mind as others remember it. Is not this the fact, if your memory can bring it to your mind, that Mr. Larrabee walked from that office in the main bank building back room and returned with some gentleman or some officer of the bank, Mr. Larrabee bringing a bundle of securities, introducing the bank official to you, and this gentleman passing back into the bank just leaving Mr. Larrabee with you?

(Counsel for complainant objected to the first part of the question.)

A. That appears very reasonable, but I can't bring my mind down to that detail.

24th. X Int. You can't say whether that was so or was not so?

A. No, sir.

25th. X Int. Was your clerk or assistant with you?

A. Yes, sir.

26th. X Int. Will you undertake to say that any one was with you in that room with that package except yourself, your clerk, and Mr. Larrabee?

A. I can't positively state it.

27th. X Int. Will you undertake to state that any one else was in that room during any portion of the time of the examination of the securities that were in that package except yourself, your clerk, and Mr. Larrabee?

A. I could not state that there was anybody. I can't state distinctly about it.

28th. X Int. After you got through with the examination that you decided to make of the securities in that package, were they put
161 back in a package and tied up, or fastened up again in that office room?

A. I can't remember how they were disposed of.

29th. X Int. Do you remember whether Mr. Larrabee did not tie them up and take them into the bank-room himself?

A. I don't remember that.

30th. X Int. You don't even remember the fact itself of the bonds being taken from that office back into the main bank building, or the circumstances under which it was done; it is not in your memory?

A. This fact is very clear in my mind of taking the bonds and examining them, and reading them off to my assistant, who took them down. Now, about doing the bundles up and putting them away, that don't come into my mind now.

31st. X Int. You can't say when you left there whether you left them on the table in that office or not?

A. I could not say whether they were left on the table to be folded up and put away; but it is my impression they were taken up and disposed of, and put away in the right place, and that is all I know about it. They were not taken away out of the office to my knowledge.

32d. X Int. What I mean is, whether it is now in your memory whether when you left there they were still on the table in the room where you were examining them, or whether they had been tied up and sealed up, and Mr. Larrabee carried them into the room before you left?

A. I don't remember the disposition of them.

33d. X Int. I understood you to say that your best recollection was that those securities that you saw there in the office of the bank were all in one package or bundle?

A. No; I did not state that.

34th. X Int. What is your recollection?

A. They were presented me; I don't know whether in a bunch or two bunches, or how they were.

35th. X Int. You don't remember the packages they were in before they were opened?

162 A. They were different makes. I don't know whether the different makes—I suppose the same kind were taken together.

36th. X Int. I ask your recollection?

A. I recollect reading them off and taking them down.

37th. X Int. Whether they were in packages or loose, you can't tell?
A. No, sir.
38th. X Int. In what shape they were brought into the office, you can't tell?
A. No, sir.
39. X Int. Or in what shape they were taken out, you can't tell?
A. I know I folded them up and put them in folds.
40th. X Int. As to whether they were put up in package or loose?
A. I suppose they were put up in a package.
41st. X Int. I ask you from recollection?.
A. I don't recollect that detail about it.

Re-examination by Mr. WALKER:

111th. Int. You have been introduced to Mr. Malone to day, who is now in the room here; will you state whether looking at Mr. Malone you can state whether he is the bank official referred to in your cross-examination above?
A. The closer I look at Mr. Malone the more I am inclined to say I saw him. I don't suppose I deserve great credit for getting impressions of individual faces.
112th. Int. You have not a good memory for faces?
A. I have a good memory, but so many faces appear to me. I only saw him a short time. I don't think I should recognize him if introduced to him.
(Signature waived.)

The deposition of William Selby, taken before James T. Allen, a notary public in and for the county of St. Louis, State of Missouri, in the city and county of St. Louis, on the 3rd November, A. D. 1875, on behalf of .

WILLIAM SELBY, being about the age of years, and having been by me first cautioned and sworn to testify the truth, the
163 whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said William Selby, and he did thereupon depose, testify, and say as follows:

Examined by Mr. MYERS:

1st. Int. Please state your age, residence, and occupation.
A. My age is thirty one years; occupation at the present time is cashier of the house of Wheedon, Tyler & Co., auction business; residence, St. Louis, 2205 Olive st.
2d. Int. How were you occupied during the year 1873?
A. During the year 1873, in more than one way.
3rd. Int. Were you superintendent of the department of insurance for the State of Missouri?
A. Yes, sir.
4th. Int. From what time to what time?
A. I think my commission was dated the latter part of February, probably the next month; I will say, I am not certain, from February to October, 1873.
5th. Int. During that time, did you make an examination of the affairs of the North Missouri Insurance Co., at Macon?
A. Yes, sir.
6th. Int. When was that?
A. In the month of May, 1873, the latter part of May—about the firs of June.

7th. Int. How long were you engaged in that examination at Macon City?

A. I was up there off and on for two weeks.

8th. Int. Who assis'ed you in the matter?

A. The attorney of the department, Mr. Mitchell.

9th. Int. What did you do in making that examination?

A. Well, I went over the books, or portion of them, that is, all the principal books, inconnection with clerks and employees. I was referred to more than one. One was cashier, and another policy clerk. Mr. Mitchell paid his whole attention to that of the loans, deeds of trust, mortgages, &c. I had nothing to do with that.

10th. Int. What assets did you examine?

A. I examined all *qll* bonds the company had; I examined the
164 cash account as far as I thought it was necessary, and the accounts due from agents; checked up those we considered good and those we considered bad.

11th. Int. Where did you examine the bonds?

A. Not at the office of the company.

12th. Int. Where was it?

A. In the back room of the banking-house of—I went with Mr. Larrabee, the secretary, to where the bonds were deposited in some bank, Malone's bank, I think it is.

13th. Int. Whom did you see there?

A. I met Mr. Malone, one of the firm, I believe. I was introduced to him, if my memory serves me right.

14th. Int. What transpired there?

A. In connection with Mr. Larrabee, when I met Mr. Larrabee, among other things, he told me the stocks, bonds, &c., were deposited down at their bank, the banking-house. I went in and he introduced me over the counter to Mr. Malone, I think that was the name. He said, Mr. Selby wanted to examine our—I believe he said "our" bonds, &c. I went into the back room and the bonds were brought to me and I went over them.

15th Int. Who brought the bundles?

A. Mr. Malone himself; the same gentleman I was introduced to.

16th. Int. Who were in the back room?

A. Nobody but myself and Mr. Larrabee, at the time and for the moment, another party was requiring his attention at the office, and he left me alone, and he left me the memorandum which was given me at the office when I started, of what the bonds consisted of.

17th. Int. What office?

A. The North Missouri Insurance Co's office.

18th. Int. Did Mr. Malone leave the back room as soon as he came in?

A. Yes, sir; came in, laid them on the table and went out.

19th. Int. How many bundles or packages were there?

A. There may have been more than one; but I think they were all together.

20th. Int. Was Mr. Mitchell there?

A. In that office? No.

165 21st. int. Was there anything in the package besides bonds?

A. No, not that I know of.

22d. Int. How large a package was it?

A. A big package. I judge, probably twelve inches long and six inches wide. As well as I can recollect, quite a large package.

23rd. Int. How thick?

A. Seven or eight inches, probably, as well as I recollect.

24th. Int. Did you examine those bonds?
A. I went over every one of them; yes, sir.
25th. Int. Can you state what bonds they were?
A. I checked them up by the memorandum I had, and made another. I could tell by reference to the different bonds named in the report at the office. I don't know the denomination of every particular one, but the gross amount of each particular kind is named.
26th. Int. You made a report to what office?
A. To the insurance office of the department of the State of Missouri.
27th. Int. Could you tell by reference to it the approximate amount of each class of bonds?
A. I could tell by reference to it if I made a statement or report of the amount of each particular class of bonds.
28th. Int. Can you tell without reference to that?
A. I don't believe I could.
29th. Int. Can you to any extent?
A. As to the gross amount of them all?
30th. Int. Yes, sir; or of each class. Can you tell what kind of bonds there were, and about how many of each?
A. Well, there was quite a number of bonds, different county bonds and States. I could not tell you the amount of each one.
31st. Int. Were there any Schuyler County bonds?
A. Yes, sir.
32d. Int. Do you remember the amount of them?
A. I could not.
33rd. Int. Could you approximate it?
A. I cannot; it has been so long.
34th. Int. Is it as much as $75,000?
A. I could not tell you.
35th. Int. What is your impression as to whether or not there
166 was about $75,000 of Schuyler County bonds?
A. My impression is there were a larger amount of Schuyler County railroad bonds, probably more than any other kind, but as to the amount I could not tell you.
36th. Int. Have you any impression or not as to whether it was about $75,000?
A. I could not arrive at anything like the amount without reference to the statement or exhibit I made at the time.
37th. Int. What conversation, if any, did you have with Mr. Malone?
A. At the bank?
38th. Int. Anywhere?
A. I did not have any conversation with him.
39th. Int. Did not?
A. None than being introduced to him, as I said, across the counter.
40th. Int. He did not speak to you at all in reference to what property the company possessed?
A. No, sir.
41st. Int. Nor in reference to its condition?
A.
42d. Int. Did Mr. Williams?
A. No, sir.
43rd. Int. Did you meet Mr. Loudon—John M. Loudon—or Mr. Hays?
A. I met Mr. Hays; I don't recollect Mr. Loudon by name.
44th. Int. Have any conversation with Mr. Hays?
A. No, sir.
45th. Int. Or not any of the directors?

A. No; I had conversation with several, but not in regard to the company.

46th. Int. Do you mean to say that Mr. Malone, on receiving the information you have mentioned, simply produced the package in the back office and left you?

A. Yes, sir. He turned them over into the hands of Mr. Larrabee, the secretary of the company.

47th. Int. Will you state again what transpired when you entered the bank?

A. We went into the bank; I walked up to the counter with Mr. Larrabee, and Mr. Larrabee, introducing me to Mr. Malone, saying I was insurance superintendent of the State of Missouri, and "Mr. Selby wishes to examine those bonds, &c., of ours." With that he went into the vault and got them out, and said we had better pass into the
167 back room. We passed around the outside and the inside and laid them on a table with a string around them, and Mr. Larrabee opened them. I had already prepared a memorandum of what they consisted beforehand, and started into work on them, and Mr. Larrabee left me.

48th. Int. What did you do with them when you got through?

A. Tied them up, checked them up, and handed them to Mr. Malone; delivered them as I was instructed.

49th. Int. Did you ever reach any conclusion while you were at Macon, as to the condition of the company?

A. Only from my own examination.

50th. Int. Well, did you announce your conclusion?

A. Before I left?

51st. Int. Yes, sir.

A. No, sir.

52nd. Int. You did at one time announce it, did you not?

A. Where? At Macon?

53rd. Int. In St. Louis.

A. Why, I announced it; yes, sir, in St. Louis.

54th. Int. After you did announce your conclusion, did any of the directors speak to you in reference to the matter?

A. Only as—none of the directors spoke to me at all.

55th. Int. Did they speak to you as individuals?

A. I think I had no conversation with anybody connected with the company after I returned here, except Overall, Larrabee, and Forbes, vice-president of the company.

Cross-examination by Mr. ALLEN:

1st. X Int. How was that package you say you saw at the banking house marked, if it was marked at all?

A. I don't recollect it was marked at all. If it was I never noticed it.

2nd. X Int. Did you notice on the wrapper about it whether it was marked North Missouri Insurance papers?

A. As I said before, I did not notice whether it was marked at all.

3rd. X Int. Had you seen Mr. Malone before that time, or any gentleman you took to be Mr. Malone?

A. No, sir.

4th. X Int. Have you seen him since?

A. Not to know him.

5th. X Int. Are you certain from your recollection at the time
168 that the gentleman you saw there was Malone from the simple introduction?

A. That is all I know about it; that is all I know.

6th. X Int. You recollect that name was used in the introduction?

A. Yes, sir; and the fact he was behind the banking-house counter, I suppose he was.

7th. X Int. But so far as you know it might have been some other party?

A. Yes, sir.

8th. X Int. Did you see any bonds exhibited as part of the assets of that company on any other occasion or at any other place than as you have stated to day?

A. No, sir.

By Mr. MYERS, (direct examination:)

56th. X Int. Have you referred to the original files of the superintendent's office of the insurance department of this State for the report made by yourself of the bonds exhibited to you at Macon, as stated in your examination yesterday?

A. Yes, sir.

57th. Int. After referring to that report can you state now the aggregate of each sort of bonds then and there exhibited to you?

A. Yes, sir.

58th. Int. Please do so.

A.

Schuyler County railroad bonds	$75,000
Macon " " "	43,700
Burlington & Southwestern Railroad bond for stock	13,000
Knox County railroad bonds	8,500
Clark " " "	2,500
Adair County normal school bond	350
Carrollton school bonds	100
Linneus " "	240
Masonic bond	100
Memphis, Scotland County, bond for stock	1,000
Mound City Mutual Life Ins. Co. of St. Louis, stock certificate	10,000
North Missouri Railroad stock bonds	21,000
North Carolina State bond (old)	23,000

The reason why that was inserted "old" they were worth a great deal more than the others.

	South Carolina State bond (old)	20,000
169	Randolph County, Arkansas, funding bond	28,500
	I am giving you the par value.	
	Butler County, Missouri, funding bond	28,500
	Macon County, Missouri, railroad bonds	8,500

59th. Int. Were all those bonds which you have just mentioned shown to you and seen by you?

A. No, not all of them.

60th. Int. Which were not shown to you?

A. The North Carolina and South Carolina bonds mentioned there as "old."

61st. Int. They were not seen by you?

A. No, sir.

62nd. Int. Were the others seen by you?

A. Yes, sir.

63rd. Int. What did you see in lieu of them, if anything?

A. I saw the certificate of the proper officer, that they were deposited

in those States for the purpose of the company transacting business as required by law.

64th. Int. What States?

A. North Carolina and South Carolina.

65th. Int. Were those bonds that you saw all contained in one package, of which you spoke yesterday?

A. Yes, sir.

66th. Int. State if anything was said in reference to the market value of the said bonds?

A. I took the par value and ascertained the market value myself.

67th. Int. Did you ascertain the market value from anything any of the officers or directors of the company said to you?

A. No, sir.

68th. Int. The figures you have given were the par value?

A. Yes, sir.

69th. Int. You stated yesterday you were introduced at the bank to a gentleman called Malone?

A. Yes, sir.

70th. Int. Did that gentleman deny his name was Malone?

A. No, sir; while it may be possible that I may be mistaken as to the name, here is the way, if it would be proper for me to state, I took it for granted it was Mr. Malone: When I asked for the bonds at the office of Mr. Larrabee, the secretary, the proper man for me to address when I got far enough along to require them to show me the bonds, he said they were not at the office, but they were left in the safe of their
170 banking house, the bank of which one of the officers was treasurer of the company; I went down to the bank with him, Mr. Larrabee; he said he would go and show them to me; he said Mr. Malone would show them to me; that they were there in the safe-keeping of Mr. Malone; I went down to the bank, and if my recollection serves me right, I was introduced to a gentleman across the counter; whether he called the name Malone, I called him Malone and he did not correct me when I was introduced to him, and when I returned the bonds to him.

71st. Int. He was the one you understood was the treasurer of the company?

A. Yes, sir; was the proper custodian of the bonds.

72nd. Int. From what did you understand he was the proper custodian of the bonds?

A. He was the banker where they done business, and was treasurer of the company.

73rd. Int. And that was all?

A. Yes, sir.

(Signature waived.)

The deposition of Zach. J. Mitchell, taken before George Brown, a notary public in and for the county of St. Louis, State of Missouri, in the city of St. Louis, on the 23rd day of December, 1875, on the part of the complainant.

ZACH. J. MITCHELL, being about the age of 33 years, and having been by me first cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, was examined, and he did thereupon depose, testify and say as follows:

Examined by Mr. MYERS:

1st. Int. State your age, residence, & occupation.

A. Zach. J. Mitchell; age, 33; residence, St. Louis; practicing law.

2d. Int. In the month of May, 1873, & in June, 1873, were you attorney for the commissioner of insurance for the State of Missouri?

A. I was.

3rd. Int. Who was then commissioner?

A. William Selby.

171 4th. Int. As such attorney, did you, in company with Mr. Selby, as commissioner, visit Macon for the purpose of investigating the affairs of the North Missouri Insurance Co.?

A. We did.

5th. Int. When was that?

A. Some time in June, 1873, I think—May or June.

6. Int. How many visits did you make for that purpose at that time?

A. I think two.

7. Int. How long did you stay on the first visit?

A. 3 or 4 days.

8. Int. And on the second visit?

A. About the same time, I think.

9. Int. How far apart were the visits?

A. There were but a few days intervening between the two visits.

10. Int. Please state all you did in that connection during your first visit?

A. All I did?

11. Int. Yes, sir; and all that was done by Mr. Selby?

A. While Mr. Selby was engaged in examining the books of the company, I believe I examined the real estate securities—notes secured by deeds of trust.

12. Int. Where did you make that examination?

A. In the office of the company exclusively, with the exception of deeds of trust that were on property in Macon County, and then I went to the court-house and examined as to those—some of them.

13. Int. Who delivered the securities to you for examination?

A. Mr. Larrabee, I think, the secretary.

14. Int. Was anybody present at the time?

A. I believe not.

15. Int. Did you, during that first visit, examine anything else than those real estate securities?

A. No, sir; I think not.

16. Int. Did you or not have any conversation with any of the officers or directors of the company during that first visit?

A. I met Col. Williams, who was president of the company, and several of directors—local directors there; I disrem'ber their names at present; Col. Barrow was one, I think.

17. Int. What took place at that interview?

A. Nothing I remember.

18. Int. In a business way?

172 A. Except they tendered us every facility for the examination of their books we might desire.

19. Int. Did you examine or see any of the bonds possessed by the company?

A. I did not; Mr. Selby went to the bank, I believe, and made that examination by himself. I was not with him.

20. Int. Did you see those bonds or any of them at either visit?

A. No, sir.

21. Int. Did you see a list of them?

A. I think I did.

22. Int. Made out by whom?

A. I could not tell who it was made out by; it was furnished to Mr. Selby in the office of the company.

23. Int. Did you have any conversation about it with any of those gentlemen?

A. No, sir.

24. Int. Did you speak to any of them in regard to any of the bonds possessed by the company?

A. No, sir; Mr. Selby went—I disremember which officer went with him—went there to examine those bonds, and made all the examination about them that was made; I made none at all.

25. Int. Was Mr. Church at Macon at that time?

A. I believe he was at the first visit.

26. Int. Was the result of his examination made known before you left?

A. I don't think it was.

27. Int. Did you see any statement prepared by Mr. Church, or prepared for him?

A. No, sir.

28. Int. Before you finally left Macon did you make known to the company, or any of its officers, that it was impaired, or likely to be considered as impaired?

A. I think we did; I don't think we had come to any positive conclusion ourselves, not till after we arrived at St. Louis, but from the appearance of matters we had concluded there was a great probability, and I think we had told Mr. Larrabee.

29. Int. Anybody else?

A. None that I know of; there was an agent of the company at that time—Tiffany was there at that time, and at the hotel with us,
173 and I think we told him what the probable result of the examination would be.

30. Int. You say you didn't see any of the bonds?

A. No.

31. Int. Did you have any conversation with any one respecting their value?

A. No, sir; I don't remember having; I don't think I informed myself as to the bonds; Mr. Selby told me he had been to the bank and had examined the bonds as embraced in that statement and that he thought they were all right.

(Cross examination waived. Signature waived.)

The deposition of William R. Walker, taken before George Brown, a notary public in and for the county of St. Louis, State of Missouri, in the city of St Louis, on the 2d day of December, 1876, on the part of the complainant.

And the said WILLIAM R. WALKER being about the age of years, and having been by me first cautioned and sworn to tell the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, was examined, and he did thereupon depose, testify, and say as follows:

Examined by Mr. MYERS:

1. Int. You are the complainant in this bill?

A. Yes, sir.

2. Int. You are now assignee of the North Missouri Insurance Company?

A. I am.

3. Int. And before that were receiver?

A. Yes, sir; I was appointed receiver of the company on the 8th of November, 1873, the date of its adjudication in bankruptcy, and I continued as such receiver in charge of the estate until, on the 21st of March, 1874, I was appointed the assignee in bankruptcy of the company.

4. Int. Have you read the bill filed in this case?

A. Yes, sir, I have; very carefully.

5. Int. Are you able to state whether or not any of the assets alleged in the bill to have been misappropriated by certain of the respondents therein ever came into your possession either as receiver or assignee?

A. I am; they never did.

174 6. Int. None of them?

A. I will make this possible qualification: that one of the securities which was made the subject of suit in part, namely, the deed of trust of T. C. Caskin to secure notes amounting in the aggregate to about $48,000, did come into my hands as receiver and is now held by me as assignee, but it is included in the bill in this case by me for this reason, that from all the information I could acquire from the officers of the company I found that that deed of trust and the notes thereby secured were given up by the company to Mr. Britton, I believe Alfred M. Britton, and were subsequently delivered to the company upon what I understood was a new consideration.

(Mr. Allen, counsel for respondents, objects to this statement.)

7. Int. You state this, I suppose, merely as showing why you verified the original bill?

A. That is the reason.

8. Int. Are you confident that the Caskin notes are mentioned or referred to in the bill filed in this case?

A. Upon consideration I believe they are not, and I therefore answer that no part of the assets which were made the subject of this suit ever came into my hands either as receiver or as assignee.

9. Int. What has misled you into the idea that the Caskin notes were a subject matter of dispute in this case?

A. I was aware that they were a subject matter of suit against Soloman G. Kitchen and others, and I confused the two cases together.

10. Int. You are certain that none of the assets mentioned in the bill filed in this case have come into your hands?

A. Yes, sir; I am certain.

11. Int. Have you any knowledge whatever as to their whereabouts?

A. I have no knowledge of my own regarding them. I will state that when Mr. Larrabee, secretary of the company, turned over the assets of the company to me, I found that the assets sued for in this case were missing; that is to say, they were not turned over to me, and I made inquiry of him as to what had become of those assets, and Mr.

175 Larrabee gave me substantially the same information as to the whereabouts of those assets that has been given in evidence by witnesses in this case.

(Counsel for respondents object.)

12. Int. I will ask you to state what efforts you made either as receiver or assignee to get possession of the assets belonging to the estate of this company?

A. I used all the efforts in my power to recover all the assets.

13. Int. How soon after your appointment?

A. Immediately after my appointment I had a number of witnesses

examined, officers of the company and others, to find out the whereabouts of all the assets of the company.

14. Int. Did you make a demand of the officers of the company for the assets?

A. I demanded the assets from Mr. Larrabee and he turned over to me certain assets, but those included in the bill he refused to turn over to me upon the ground that they were not in his possession.

(Counsel for respondents object.)

15. Int. Are you able to state the amount of the indebtedness of the North Missouri Insurance Company so far as it has been proven and allowed by and before the register in charge of the case?

A. Yes, sir.

(Counsel for respondent objects as immaterial and irrelevant.)

16. Int. Please state the figures?

A. The amount proved against the estate up to this date is $592.642.53.

17. Int. On what account has that amount been proven and allowed?

(Counsel for respondent renew the objection as last stated.)

A. I have not analyzed the items as proved sufficiently to enable me to state that precisely, but I will state that shortly after I was appointed receiver I made up a statement of the liabilities of the company from the best information I could obtain, and the amount of liabilities as I then ascertained them was $594,702.21.

18. Int. About $2,000 more than the amount that has been proven?

176 A. Yes, sir. I will state that I have since learned of other claims against the company which are included in those proved, and I am aware there are a number of claims that have not been proved.

(Counsel for defendant objects.)

WITNESS (proceeding). I have here a summary of the liabilities thus ascertained by me as receiver, showing the different classes making up the amount I have stated. I will either read it or produce it.

Mr. MYERS. Read it.

(Counsel for respondents object.

Witness reads as follows:)

Claims having priority under section 28 of the bankrupt act	79 21
Secured claims	57,584 79
Claims for losses, so far as adjusted, including disputed claims	486,246 73
Balances due company's agents for agency, ledger, home office	1,332 98
Balance due company's agents per agency, ledger, eastern department	3,209 87
Balances on company's general ledger	12,719 90
Claims for unearned premiums, home office	17,847 49
Claims for unearned premiums, eastern department	12,770 19
Claims for unearned premiums on marine risks	1,381 87
Miscellaneous claims	1,529 18
Total liabilities to creditors so far as ascertained	$594,702 21

WITNESS. I will state that these claims for unearned premiums include only such policies as had been surrendered up to the time I made that statement; that is, up to about the 1st of March, 1874; since then a numbered of other policies have been surrendered and claims have accrued for unearned premiums upon them.

19. Int. From what source did you obtain the figures that you have just given?

A. From the company's books, from the policies that had been surrendered to the company before its bankruptcy, and the return premiums upon which had not been paid, and from the policies that were surrendered to me as receiver, and generally from the books of the company.

177 (Counsel for respondents object to this statement of losses on the ground that the sources of information being in writing should have been produced.)

20. Int. Are you able to state the total amount of risks in force at the time of the commencement of the proceedings in bankruptcy against the company?

(Counsel for respondents objects.)

A. I could not state that with any degree of accuracy. I could approximate to it, I suppose; I am not positive.

21. Int. What is the approximation?

A. I should say about fifty millions of dollars.

22. Int. Was that same amount in force for a year preceding the commencement of these proceedings in bankruptcy?

A. My only information upon that score is derived from the official statements made by the company to the superintendent of insurance.

(Counsel for respondents object.)

WITNESS (proceeding). By referring to those statements which I have here I can state the amount.

23. Int. Those which you brought to-day?

A. Yes, sir.

24. Int. Please refer to the statements and state what the amount is.

A. This is the annual statement made by the company for the year ending 31 December, 1872, filed in the insurance department of Missouri, or in the office of the superintendent of the insurance department of the State of Missouri, of date 1 February, 1873. This statement shows that there were of fire risks in force on the 31st of December, 1871 ..... $8,050,032 85

(Counsel for respondents object to this matter put in these papers in this form.)

WITNESS (proceeding.) That there were written during the year 1872 of fire risks 39,791,363 67

Total fire risks $47,841,396 52

Then there is deducted those expired and marked off as terminated 20,517,611 81

Leaving in force at the end of the year 1872 of fire risks $27,323,784 71

178 That there were written during the year 1872 of marine and inland risks $5,638,612.50, from which is deducted those expired and marked off as terminated $5,548,245.50, leaving in force at the end of the year 1872 of marine & inland risks $90,367.00.

25. Int. Is there anything else bearing on this matter within your knowledge?

A. No, sir.

Cross-examined by Mr. ALLEN, counsel for respondents:

1. X Int. Do you know from your own personal knowledge, or from any records or papers that have come into your possession of the North Missouri Insurance Company, how long before you became receiver the defendants in this case ceased to be officers of the North Missouri Insurance Company?

A. I became receiver on the 8th of November, 1873, and those of the defendants who were officers, except Mr. Larrabee, ceased to be such on or about the 21st of June, 1873. Some of them resigned their offices a few days before that date, but it was about time. I derived that knowledge from the records of the company.

2. X Int. Has there been any careful examination made of the claims on losses which have been made against this company by you?

A. There has been an examination made to a certain extent. All claims that were made on the company were examined by the officers of the company, and all the claims that have been proved in bankruptcy have been more or less examined by me; but I will state that there are some claims that I intend to have re-examined, in accordance with the general orders in bankruptcy, with a view of testing their validity.

3. X Int. Have you any information tending to show that a large number of fraudulent claims have been proved against this company in bankruptcy from any source?

A. I have no very definite information as to that. I believe there have been fraudulent claims proved up against the company, but the amount of these, I should say, do not exceed $50,000. I think that
179 is a liberal allowance—that is the outside—there may be not nearly so much.

Int. (By Mr. MYERS.) What do you mean by fraudulent claims?

A. Well, claims which are made for a larger amount than what is really due; some claims for losses that were sustained by the act of the policy holder; that is to say, some claims that the company allege were founded on losses which were procured by arson.

4. X Int. Is this paper which you testified from an original paper?

A. It is a certified copy, which, under the laws of Missouri, is to be received in all courts as evidence.

5. X Int. Where is the original?

A. The original is on file at the office of the superintendent of insurance for the State of Missouri.

6. X Int. Your testimony in regard to amounts in the direct examination was testimony from a copy of an original paper on file?

A. From the certified copy of an original paper.

WILL'M R. WALKER.

The deposition of James B. Melone taken before George Brown, a notary public in and for the county of St. Louis, State of Missouri, in the city of St. Louis, on the 22d day of December, A. D. 1875, on the part of the respondents.

JAMES B. MELONE, being about the age of 39 years, and having been by me first cautioned and sworn to tell the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, was examined, and he did thereupon depose, testify, and say as follows:

Examined by Mr. ALLEN:

1. Int. State your name in full.

A. James B. Melone.

2. Int. And your age and residence.

A. Age, 39; residence, Macon City, Missouri.

3. Int. What is your occupation at present?

A. Cashier of the Macon Savings Bank.

4. Int. From what time to what time, if at all, were you treasurer of the North Missouri Insurance Company?

180 A. I was treasurer of the North Missouri Insurance Company from July, 1871, until some time in June, 1873.

5. Int. And during what time, if at all, were you a director of that company?

A. During the same time—during my treasurership.

6. Int. During that period in what business were you engaged?

A. I was cashier of the then National Savings Bank.

7. Int. And that bank had been known by what other name before or since?

A. Before, Melone & Epperson's; and since, the Macon Savings Bank.

8. Int. Melone, of Melone & Epperson, who was that?

A. I was Melone of the firm of Melone and Epperson.

9. Int. What was your business and what were your duties as treasurer of the company while you were treasurer?

A. I was custodian of the moneys coming into my hands from the company.

10. Int. How did those moneys come to your hands?

A. They were paid me by officers of the company, usually by the cashier of the company.

11. Int. Who was the cashier during this time?

A. James G. Howe most of the time.

12. Int. How were those moneys paid out by you?

A. They were paid out on checks on the order of the secretary & president.

13. Int. Where were the moneys kept?

A. They were kept in the Macon Savings Bank.

14. Int. The same bank of which you were cashier?

A. Yes, sir.

15. Int. What other assets of the North Missouri Insurance Co. besides moneys did you as treasurer of that company have charge of?

A. None at all.

16. Int. State whether, as treasurer of the company, you ever had in your possession any Schuyler County bonds.

A. Never.

17. Int. Any Macon County bonds?

A. None.

18. Int. Any Knox County bonds?

A. None.

19. Int. Any Adair County bonds?

A. None.

181 20. Int. Any Masonic bonds?

A. None at all.

21. Int. Any Burlington & Southwestern R. R. Company's bonds?

A. None.

22. Int. Or any notes of William E. Moberly?

A. None.

23. Int. This bank account of the moneys of the company, kept as you say in the Macon Savings Bank, please state in whose name that money was deposited.

A. It was deposited to the credit of the treasurer of that company without giving any name, and the reason of that was simply for a matter of convenience, so that the checks might be paid in my absence. They just took and deposited the money, and kept a bank book same as an individual, and when the cashier would bring money down it was entered in the bank book, and a settlement made monthly. At the end

of each month the bank-book was made up and vouchers returned, same as with the account of an individual.

24. Int. How many banks are there in Macon City, and were there at that time?

A. Two.

25. Int. Which of them, if either, had a fire-proof vault?

A. I think the Macon Savings Bank was the only fire-proof vault in town really. The other bank had a vault made of brick; it possibly might be fire-proof. Ours was both brick and iron, made for a fire-proof vault.

26. Int. What was the practice of your banking-house as to the taking of special deposits of valuable papers? State whether you ever did such a thing.

A. Yes, sir; it was customary to take packages of parties and lay them in the vault for safe-keeping. It is customary, I suppose, with every banking institution.

27. Int. State whether there were any very large number or not of papers so left with your bank on deposit by people in Macon?

A. Oh, yes; most of our customers had more or less private papers left in packages with their names on.

182 28. Int. What was the fact during the spring and summer of 1873 as regards such papers?

A. It has been the case, more or less, ever since I have been in business there.

29. Int. Were there any papers at any time left on special deposit at that banking-house by the North Missouri Insurance Company, or by Mr. Larrabee, secretary of that company?

A. There was, left by Mr. Larrabee, secretary of the company.

30. Int. And when so left, during what period or periods?

A. Well, he may have had packages there of that character, more or less, a number of years. He had a package there about the time Mr. Church was there.

31. Int. How long had that package been there when Mr. Church was there?

A. It had only been there a few days; I don't remember the exact time.

32. Int. More than one package?

A. I think it was all in one package.

33. Int. Describe that package, if you please.

A. Well, as well as I remember, it was rather a large package, wrapped up in paper, with string around it, marked "A. Larrabee, secretary;" possibly secretary of the North Missouri Insurance Company.

34. Int. Is Mr. W. F. Church you refer to the insurance superintendent of the State of Ohio?

A. Yes, sir.

35. Int. What were the circumstances of Mr. Larrabee leaving that package there, if you recollect them; whether he said anything to you about it or not?

A. The package was left at the bank in my absence. I never spoke to Mr. Larrabee in regard to the package at all previous to its having been left there.

36. Int. Did you see this Mr. Church at Macon City?

A. I saw him once.

37. Int. Where?

A. At the office of the bank.

38. Int. Do you recollect the day?

A. I do not.

39. Int. Do you recollect the year?

A. 1873.

40. Int. About what time of the year?

A. Well, it was about the 1st of May, 1873, I think; somewhere along there, I think.

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41. Int. Go on and state under what circumstances he came to the bank, with whom, what passed between you and him, or any other party he was with, and all that transpired under your observation at that time.

A. Mr. Church and Mr. Larrabee came to the bank together. Mr. Larrabee introduced Mr. Church to me, and asked me to hand him the package he had left there, which I did; then he asked me if I could let them examine them in the house. I told him they could go in the back room, the back office, and examine them, and I went back with them and showed them into the room. I gave them chairs and I left the room, and had nothing further to say or do with it during the examination.

42. Int. What became of those papers?

A. The papers, after they got through, were left in the vault.

43. Int. Who put them in the vault?

A. Mr. Larrabee, I think, handed them to me, or called me back to get them, and told me to put them back in the vault.

44. Int. What was the condition of the package as compared to what it was when you first handed it to Mr. Larrabee that day?

A. Well, it had been opened. I believe they were open when he called me back, and either he put them up or told me to put them up, and wrap them up in paper and put them back. I disremember which.

45. Int. State whether at the time you knew what that package contained.

A. I did not. I never saw anything that was put in it until after it was opened.

46. Int. State whether at the time you put it back into the vault you knew what that package contained.

A. I didn't; only just what I saw from being in the room there.

47. Int. What did you see?

A. I saw securities spread out on the table there of different characters.

48. Int. Could you tell what they were?

184 A. I could not without examining them.

49. Int. Did you examine them?

A. I did not.

50. Int. State whether or not, at the time you put them back into the safe after they were returned to you, you knew what that package contained, so as to state what the securities in the package were.

A. No, sir; I did not.

51. Int. What do you know with reference to a Mr. Selby from St. Louis, superintendent of the insurance department of Missouri, handling any of those papers at any time?

A. I don't know that he ever *any* handled any of them. I never saw him do; he may have done so.

52. Int. Do you remember seeing him there at Macon?

A. I saw him in our office, I think, once; possibly on the street once or twice, at a distance.

53. Int. State what happened when he came to your office. You mean by your office the office of the bank?

A. Yes, sir. Well, I don't remember anything occurred there more than I had an introduction to him.

54. Int. Who introduced him to you?

A. Mr. Larrabee. There was something said about his examing those bonds, but I don't remember what it was; he didn't examine them that evening.

55. Int. He did not?

A. No, sir.

56. Int. Did you ever see him there on any other occasion?

A. I don't remember to have seen him there on any other occasion.

57. Int. Where had this package of papers been in the interim between Mr. Church being there and the time when you saw Mr. Selby come there?

A. It had been in the vault there.

58. Int. Are you able to state whether Mr. Larrabee had in the mean time taken them away, or any of them?

A. Mr. Larrabee had access to them, but I don't know of his taking them away; he may have done so in my absence; he had full
185 control of them, & had as much right to get them as any one else—as myself or any one in the office.

59. Int. Were you present at the examination of Mr. Church in this office?

A. No, sir.

60. Int. I mean when his deposition was taken?

A. Yes, sir.

61. Int. To be used in this case?

A. Yes, sir.

62. Int. Were you present at the time when Mr. Selby's deposition was taken in Mr. Myer's office?

A. Yes, sir.

63. Int. You heard what he stated at that time?

A. Yes, sir.

64. Int. Please state now, Mr. Melone, what became of that package of papers, if you know.

A. The package of papers that were left there?

65. Int. That we have been talking about; that Mr. Larrabee left there and was called for by him when Mr. Church was there, and was on the table at the time that Mr. Church was making the examination.

A. Well, it was disposed of at different times and to different parties upon the order of Mr. Larrabee, with the exception of one lot which Mr. Rubey took himself. He was assistant cashier at the time, and had as much control over them as I had.

66. Int. Do you know what that lot was?

A. I' was some Omaha bonds—Macon County bonds issued to the Omaha Railroad, of which he was treasurer.

67. Int. Do you remember how many?

A. Well, I think there was about $29,000 of the bonds, as near as I remember.

68. Int. Known as the Hudson & Liberty Township bonds?

A. Yes, sir; I think those are the ones.

69. Int. Do you recollect the denomination of them?

A. I do not.

70. Int. Were you present when Mr. Larrabee gave his testimony in this case?

A. No, sir.

71. Int. State, if you recollect, whether any of these papers were delivered to Mr. Larrabee in person.

A. Yes, sir; there was.

186 72. Int. Which of them, if you recollect?

A. There was quite an amount of them. I don't remember. I think I have a memorandum of them that he received from me when he came to St. Louis. He came out to my house one evening after banking hours and told me that he wanted to get those securities; that he was coming to St. Louis; and I went to the bank with him, and he took the package and got out such as he wanted and brought them here. What they were I cannot state without referring to that memorandum.

73. Int. Where is that memorandum?

A. It is at home.

74. Int. Is that one of the papers that you expected here to-morrow morning?

A. Yes, sir. I presume they will be here this evening or in the morning.

75. Int. Do you remember what became of the rest that were not at that time or any other time given to Mr. Larrabee?

A. Some were delivered to Mr. Griffiths and some of them to Mr. B. G. Barrow.

76. Int. When you say Mr. Griffiths, do you mean Byron Griffiths?

A. I think that is his given name.

77. Int. Do you remember what bonds they were that Mr. Griffiths took?

A. They were Macon County bonds, I think.

78. Int. Any other kind of bonds besides Macon County bonds?

A. There may have been some Knox County. I think there was.

79. Int. And what bonds were delivered to Mr. Barrow?

A. Schuyler County bonds.

80. Int. Any other besides Schuyler County bonds?

A. I think there was a normal school bond or two of Adair County.

81. Int. Do you remember whether he got a Masonic bond?

A. Well, either he got it or Mr. Larrabee brought it down here, I don't know which.

82. Have you any recollection in reference to $13,000 Burlington and Southwestern Railroad Company's bonds being given up to anybody?

A. Yes, sir; I think they were delivered to Mr. Watkins.

83. Int. What Watkins?

A. W. W. Watkins.

187 84. Int. How did he come to get them, if you know?

A. They were returned to Mr. Tracy's bank for him. I either did that myself, or sent them up there to Mr. Tracy's bank.

85. Int. Why did you do that?

A. I was directed to do so—that is my recollection—by Mr. Larrabee, I think.

86. Int. Are you able to state whether these Burlington and Southwestern Railroad Company's bonds were there at the time Mr. Church made his examination—there in the package?

A. I think they were, sir; but I don't know it positively.

87. Int. What can you say as to their having been taken by you when you gave them up or sent them to Mr. Watkins from the same package of papers?

A. Well, sir, they were there then.

88. Int. State whether you attended a meeting of the board of direct-

ors of the North Missouri Insurance Company immediately after Mr. Church left Macon City.

A. I did.

89. Int. State what transpired at that meeting, so far as you can recollect.

A. The only thing I remember, that it was understood that Mr. Church had made an impairment of the capital in his examination, and the question was before the directors how to make that impairment good.

90. Int. State whether there was exhibited at that meeting by Mr. Larrabee, or any one else, a detailed statement or any statement of the assets and liabilities of the company.

A. There was not a detailed statement. I think the total footings of Mr. Church's figurings were presented to them without itemizing.

91. Int. And presented by whom?

A. Presented by Mr. Larrabee.

92. Int. State whether, to your recollection, such statement gave the amounts, or the names, or the denominations of any bonds or notes of the company.

A. I don't think there was anything but the amounts, without reference to the kind or character.

93. Int. State whether you ever saw the annual statement made
188 in January, 1873, by the North Missouri Insurance Company.

A. I presume I saw it, but I never examined it or looked over the items more than the total footings.

94. Int. When did you first know that the Schuyler County bonds, Macon and Knox County bonds, the Adair County Normal School bond, and Masonic bond, and the Burlington and Southwestern Railroad bonds, and the notes of William E. Moberly were included in the statements as assets of the North Missouri Insurance Company? I mean with reference to Mr. Church's visit and the bankruptcy of the company.

A. I don't have any impression about those until after the bankruptcy of the company. I never had given them any attention. I don't remember to have noticed them itemized in any statement prior to the bankruptcy of the company. I may have seen them in looking over, and yet my attention not been called to them specially; didn't notice the amounts or character of the bonds that were in there. I never saw the notes of Moberly; don't know there was such notes only from hearsay.

95. Int. And only from hearsay after what time or up to what time? When did you first hear anything about the Moberly notes with reference to the North Missouri Insurance Company?

A. After the company moved here, or about the time, I heard them spoken of.

96. Int. Did you ever attend a meeting of the directors of the North Missouri Insurance Company at which a proposition was submitted, through Mr. Larrabee, with reference to stock—the purchase of stock of the company for which these Moberly notes were to be given as a consideration?

A. I was present at a meeting in which there was a proposition from Mr. Moberly to purchase stock by giving lands in Livingston County, I think; but I dont remember anything being said about notes.

97. Int. What was the action of the board of directors as to that proposition at that time, if you recollect?

A. I think the matter was left open at that time for, perhaps,
189 an examination of the land and titles and so forth; at any rate, it was not consummated at that board meeting, as I remember.

98. Int. Do you recollect when that was?

A. I could not give you the time. I think it was in 1872.

99. Int. State whether prior to the bankruptcy of the company you, at any time, ever saw any printed schedules or slips of paper purporting to give the assets of the North Missouri Insurance Company, in which any of the bonds or notes that we have been asking about here to day were included as the assets of the company.

A. I don't remember to have noticed it, sir.

100. Int. Did you or your securities who are named as defendants in this cause ever execute a bond as treasurer in the sum of $100,000 for the faithful discharge of your duty, other than the bond a copy of which is annexed to the answer in this case?

A. No, sir.

101. Int. What, if any, experience or knowledge have you ever had of fire insurance business?

A. I never had any, sir, except just what I gathered up in attending to my own insurance and what little I learned from observation. I never followed it.

102. Int. During your connection with the North Missouri Insurance Company as one of its directors and as its treasurer, what attention, if any, did you give to the detail of its business except as treasurer?

A. I didn't give any. I hadn't the time if I had been so disposed. I was actively engaged in my own business, & I only went about the office when I had business connected with the institution of which I was cashier, and attending the directors meetings sometimes.

103. Int. How often did you attend the meetings of the directors?

A. They held their meetings usually once a month. I was not regular in my attendance. Sometimes I attended two or three meetings regularly, and perhaps miss one or two.

104. Int. How often did you visit the office of the company?

A. I suppose I was possibly in there once a week. Sometimes
190 a little oftener. Sometimes not so often. Just as it happened.

105. Int. What attention to its business affairs did you give when you so visited its office?

A. I didn't give any at all to the affairs of the company.

106. Int. What was the occasion of those visits?

A. Well, sometimes I had matters of business, collections and so forth on the company, and called up to see about them. Sometimes I was passing by and called in for a moment or two.

107. Int. When you called there whom would you see?

A. I usually saw the secretary.

108. Int. And the business you transacted there when you so called was transacted with whom?

A. Transacted with the secretary or assistant secretary.

109. Int. As treasurer, state whether you had any authority over any of the employees of the company.

A. None at all, sir.

110. Int. Or any management or control of its bookkeeping?

A. None at all.

111. Int. How far from your banking house was the office of the company in the city of Macon?

A. Well, it was something between 300 and 400 yards, I should judge.

112. Int. Which one of the officers of the North Missouri Insurance Company gave it his exclusive attention?

A. The secretary, Mr. Larrabee.

113. Int. And who else of the directors or officers of the company gave it their exclusive attention?

A. Mr. Langdeau was a director for a while; he gave it his exclusive attention; he was assistant secretary for part of the time. I was director, I think, the first year; maybe more. I don't remember just how long.

114. Int. Was he a director also?

A. He was the first year, 1871 & 1872, if I remember.

115. Int. Was he a director in 1873?

A. I don't think he was.

116. Int. What was the standing and reputation of Mr. Larrabee, secretary of the company, in that community up to the time of
191 the removal of the office of the company to St. Louis, as a competent, honest, & straightforward business man?

A. It was good as far as I knew.

117. Int. What was his reputation as to being an able and intelligent insurance man?

A. He was regarded there as one of the best insurance men we had. He had been in the business there about 12 years or more.

118. Int. How long had this company been existence?

A. It was organized, I think, in 1866.

119. Int. How long had Mr. Larrabee been connected with it?

A. From its organization.

120. Int. What had been the progress and growth of the company—the insurance company—from its organization up to January, 1873?

A. It had been very rapid, and its business has grown tenfold, I reckon.

121. Int. Please state, Mr. Melone, whether of the bonds and notes named in the bill in this case you appropriated any to your own use.

A. I did not, sir; never got a cent for my treasurership in the way of salary or in any other way. I believe I got $50 the first year.

122. Int. State whether, to your knowledge, any other of the defendants in this cause appropriated to their own use any of the bonds or securities?

A. They did not sir, that I am aware of.

123. Int. Or gave any to their friends?

A. No, sir.

Mr. ALLEN. I believe that is all I wish to ask you about at present.

Cross-examined by Mr. MYERS, counsel for the complainants:

1. X Int. Do you say that at no time while you were connected in any capacity with the North Missouri Insurance Company you had in your possession or custody for any length of time, in any capacity, any of its property, except money, or any property that was represented as belonging to it?

A. I had not. I held some of them as collateral security as an officer of the bank, or rather the bank did several times during its ex
192 istence there; and they borrowed money and would leave collateral to secure the payment of it, but not as an official of the company.

2. X Int. What is the present name of the bank?

A. Macon Savings Bank.

3. X Int. When did it take that name?

A. It took that name July, 1873.

4. X Int. What office did you hold in it?

A. Cashier.

5. X Int. Have you held that office ever since it took that name?
A. I have.
6. X Int. What was its name next before that?
A. National Savings Bank.
7. X Int. How did it have that name?
A. From January, 1873, to July, 1873.
8. X Int. What office did you hold in it during that period?
A. The same position.
9. X int. What name did it have next before that?
A. Melone & Epperson.
10. X Int. Who composed that firm?
A. Charles G. Epperson and myself.
11. X Int. Which of these three banks that you have named held bonds of the North Missouri Insurance Company as collateral?
A. Melone & Epperson.
12. X Int. What bonds?
A. Well, they held some Macon County bonds and some notes.
13 X Int. Any other bonds?
A. No, sir.
14. X Int. What notes?
A. Well, I could not tell you now, it has been so long.
15. X Int. What character of notes?
A. The notes were made payable to the company, real estate notes said to be secured by real estate.
16. X Int. When was the first time the North Missouri Insurance Company left any of its assets, or any property that it represented as being its assets, with either of the three named banks on special deposit?
A. I could not answer that question. They had several de-
193 posits along there first and last, I think, left there by Mr. Larrabee at different times. I don't know the dates.
17. X Int. Any preceding January, 1873?
A. Yes, sir.
18. X Int. You don't remember what they were?
A. No, sir.
19. X Int. You spoke in your examination of a package that was left at that bank of which you were cashier, which package you state was exhibited at the visit of Mr. Church; when was that package first left?
A. About the time of Mr. Church's visit there.
20. X Int. When did you first see it?
A. I saw it on the evening of the day, or the next day, after it was left there.
21. X Int. Who called your attention to it?
A. One of the parties in the bank; Mr. Rubey, I think.
22. X Int. What did he say to you?
A. He told me that there was a package left by Mr. Larrabee.
23. X Int. Anything else?
A. That is all I remember.
24. X Int. What endorsement was on that package when you first saw it?
A. I think it was marked, "A. Larrabee, secretary of the North Missouri Insurance Company."
25. X Int. How large a package was it?
A. Well, I don't know; it was perhaps eight or ten inches thick; possibly the same breadth; maybe a little wider.

26. X Int. What became of the wrapper?

A. I do not know, sir; it was just a paper.

27. X Int. What length of time intervened between the time you first saw that package and the time of Mr. Church's first visit?

A. Well, I don't know but what Mr. Church was there; it was either about the time he came there, or just a day or so after, that the package was put in there; it was so near the same time I don't remember now whether it was when he was there or the day before he came; I think it was about the time he got there.

28. X Int. Did you see Mr. Larrabee in respect to that package, or did he say anything to you in respect to it before Mr. Church visited the bank?

A. He did not.

194 29. X Int. Did you examine the package before Mr. Church visited the bank?

A. I did not.

30. X Int. Was Mr. Church introduced to you when he visited the bank?

A. Yes, sir.

31. X Int. What took place when he was introduced, and who introduced him?

A. Mr. Larrabee introduced him, and told me he wanted to get the package he had there, and I got it for them; then he asked me if I had any place that he and Mr. Church could examine the package in, and I told him he could go into the back room, and I went back and showed them in and gave them chairs.

32. X Int. Did he tell you who Mr. Church was?

A. I think he did.

33. X Int. Did he say what he came for?

A. In his introduction he told me Mr. Church was commissioner from Ohio.

34. X Int. Had you heard of Mr. Church's coming before that?

A. I didn't hear of his coming until after he had come; didn't know he was in town until the next day.

35. X Int. Did you know he was in town before his visit to the bank?

A. Yes, sir.

36. X Int. Who told you that?

A. Well, I had just heard of it; I don't remember who told me.

37. X Int. Was there a board meeting between the time of his arrival and the time of his visit to the bank?

A. No, sir.

38. X Int. Was there a board meeting preceding his visit to the bank?

A. No, sir; not since the regular meeting of the board; there hadn't been any that I know of for some time; two or three months, perhaps.

39. X Int. Did Mr. Larrabee state to you in Mr. Church's presence what Mr. Church wanted, or what he wanted?

A. No, sir.

40. X Int. Or what was his design?

A. Nothing more than I have stated, that I remember.

41. X Int. They walked into the back office. Who took in the package?

A. I don't know whether I took it in or Mr. Larrabee. I think

195 I handed it to him at the counter, and then he asked me if they could have the back office to look over it.

42. X Int. Did you go in the back office?

A. I went in.

43. X Int. At one time while you were in the back office, you state, the bonds were distributed loose on the table?

A. Yes, sir.

44. X Int. You say you did not notice the character of any of the bonds?

A. No, sir; I did not.

45. X Int. You did not observe that any of them were Schuyler County bonds?

A. No, sir.

46. X Int. And didn't observe the character of any of the bonds?

A. None.

47. X Int. Did you ever have any of those bonds, or any of the securities that were in that package, in your hands anywhere except in the bank?

A. I don't know whether I did or not; I don't know; I may have had; may have been these Macon County bonds I spoke of as used as collateral; I may have had those.

48. X Int. Aside from that, did you?

A. No, sir; not that I know of.

49. X Int. Did you ever put them to your private use?

A. No, sir.

50. X Int. Nor any of them.

A. No, sir.

51. X Int. Did you ever make a list of them?

A. I don't know whether I did or not. There was a Mr. Selby there at the time I spoke of his being in the office with Mr. Larrabee. Mr. Selby asked me if I would list these bonds for him. I told him I didn't have time, and that after business hours, if I had time to do it, I would do it; otherwise I could not do it. Mr. Larrabee suggested he would send some one down to make a list of them; then I could compare the list with the bonds that were there and see that it corresponded, for the benefit of Mr. Selby; and he sent some one from the office—I disremember who, some of the employees—who made a list of them, & afterwards I compared the list with the bonds that were there, and stated to Mr. Selby that the bonds were correct as indicated in the list.

52. X Int. Were they—was the list correct?

A. I think so, sir; yes, sir.

196 53. X Int. Where were the bonds when Mr. Selby asked you if youwould make a list of them?

A. They were in the vault.

54. X Int. Where was the list made?

A. It was made in our office after business hours. I just took the list and compared it with the bonds that were in the package—the securities.

55. X Int. How long was the person occupied in making the list?

A. Well, I didn't give it any attention; I suppose about an hour.

56. X Int. You mean to say you have no impression as to who that person was?

A. I have an impression, but I am not positive. I think it was Dr. Wilkinson, an employee of the office of Reister & Wilkinson.

57. X Int. Have you any doubt but what it was he?

A. That is my impression.

58. X Int. What is his first name?

A. I don't believe I know his initials.

59. X Int. Where does he reside?

A. He resides now at Ottumwa, I believe, Iowa; he lived then at Macon.

60. X Int. Did anybody assist him in making that list?

A. There may have been some one with him; I am not positive.

61. X Int. From the bank?

A. From the office of the insurance co.

62. X Int. What is your impression as to who that was?

A. I have no impression.

63. X Int. Who furnished the paper on which to make the list?

A. I don't know that either.

64. X Int. Who assisted you in comparing the bonds with the list?

A. No one.

65. X Int. Did you make any check marks on the list?

A. I don't know if I did. I, of course, had to check them in some manner to know which I had gone over—whether there are any check marks on the list I gave him, or that they made out, or not I don't know.

66. X Int. How long were you occupied in comparing the bonds with the list?

A. I suppose about 30 minutes.

67. X Int. Were there any Schuyler County bonds among the 197 package at that time?

68. X Int. Were there $75,000 of them?

A. That is my recollection.

69. X Int. Were there not all of these bonds, of which we have been speaking, according to your recollection?

A. There must have been; I don't think any had been taken out that I know of.

70. X Int. Where were the bonds when you began to compare them with the list?

A. I believe they were in the back room. After the gentlemen had got through making their list I told them just to leave them there until I got through and I would go in there and compare their list with the bonds. I think it was made in the back room.

71. X Int. Did you make the comparison in the back room?

A. That is my recollection.

72. X Int. Were the bonds just before they were taken in the back room contained in the same wrapper they had been when Mr. Church called?

A. Yes, sir.

73. X Int. What did you do with the bonds after you finished the comparison?

A. I put them in the vault.

74. X Int. In the same wrapper?

A. The same wrapper, yes, sir.

75. X Int. Whereabouts in the vault; in any particular place?

A. I think they were put on the top of the safe. The safe set in the vault, on one side of it.

76. X Int. Did the insurance company have any small box in the vault in which its property was kept?

A. Not that I know of.

77. X Int. What did you do with the list after you compared it?

A. I sent it up to the office.

78. X Int. By whom?

A. I don't remember.

79. X Int. What is your recollection?

A. I think it was some one from the office—some of the employés.
80. X Int. Mr. Wilkinson?
A. I have no recollection as to who it was.
81. X Int. For what purpose did you send it to the office?
A. I sent it there for Mr. Selby, as he had requested.
198 82. X Int. Did you tell him you would send it there?
A. I think possibly they sent down after it.
83. X Int. Did you speak to Mr. Selby about it afterwards?
A. I did not.
84. X Int. Did you tell him it was correct?
A. I never spoke to him afterwards that I know of until I met him here.
85. X Int. Did you certify anything on the list as compared by you?
A. I think I just simply stated, at the bottom, that the above bonds and securities were, on examination, found to be correct in the amounts and kind.
86. X Int. How was the list headed?
A. I don't think there was any heading to it—just simply commenced with the bonds, giving the kinds and amounts.
87. X Int. What did the list purport to be?
A. Simply a list of those securities in that package.
88. X Int. What was written on that paper, as near as you can remember?
A. There was nothing written, only a description of the bonds, except what I added at the bottom indicating that I had compared them.
89. X Int. And that it was correct?
A. And that it was correct.
90. X Int. How did you sign that?
A. I signed it "J. B. Melone."
91. X Int. Simply, or as treasurer?
A. Simply signed my name.
92. X Int. Are you certain of that?
A. I am pretty positive. Yes, sir.
93. X Int. Was it in pencil or ink?
A. Well, sir, I don't remember.
94. X Int. Was the estimated value of the bonds placed on that list?
A. No, sir.
95. X Int. Did you ever see that list again?
A. I never did.
96. X Int. Was Mr. Church in Macon at the time you compared that list?
A. Yes, sir, I think so.
97. X Int. When Mr. Church called & went into the back office of the bank, how long did you remain in the back office?
A. Just long enough to give them seats & prepare a place for them.
98. X Int. Which of these bonds, that were in that package at
199 the time you compared that list, did you first part with after making the comparison?
A. I think the Schuyler County bonds were about the first given out.
99. X Int. You gave them to G. B. Barrow?
A. Yes, sir.
100. X Int. Where was that?
A. At the bank.
101. X Int. Was that on the written order of Mr. Larrabee?
A. I think so, sir.
102. X Int. Are you certain of it?

A. I am pretty certain.

103. X Int. Was G. B. Barrow, at that time, a director of the company?

A. I think not. He was not a director of the company until it moved down here.

104. X Int. Where is that order of A. Larrabee?

A. I have it at home. I expected it here this morning, but it didn't come.

105. X Int. How does it read?

A. I was directed to me ordering me to deliver to Mr. Barrow so many Schuyler County bonds, amounting in the aggregate to $75,000.

106. X Int. Is it dated?

A. Yes, sir.

107. X Int. Did you take Barrow's receipt on it?

A. No, sir; just took up the order.

108. X Int. Did you have him endorse the order?

A. No, sir.

109. X Int. Are you certain you have that order?

A. Unless it has been misplaced. The evening I started to come down here, or the day previous, I thought I had those papers at home in my desk, and after we had closed the bank and gone home, I looked for the papers and couldn't find them, and I am satisfied instead of being there they were at the bank in the vault, and it was too late to get into the bank; I could not get the keys and had to come away without them; then I left word with Mr. Shortridge, who is staying in my place during my absence, to look into the vault and send them to me by mail so I could get them this morning, and I got a letter from him stating he had looked and had not been able to find them.

110. X Int. What amount of Schuyler County bonds is mentioned in the order?

A. $75,000.

200 111. X Int. Give the language of the order as near as you can.

A. Well, "You will please deliver to B. G. Barrow $75,000 of Schuyler County bonds." I don't know whether it may have stated in the order 75 bonds of $1,000 each, I disremember, or else $75,000 of Schuyler County bonds, one way or the other, I am not positive which.

112. X Int. Is that all?

A. That is all; it gives the date according to my recollection.

113. X Int. Up to that time had you heard how the company had come into possession of those bonds?

A. No, sir.

114. X Int. Have you any recollection of having seen any of those bonds at any time prior to the time you compared with *with* the list?

A. No, sir.

115. X Int. How long had those Schuyler County bonds been at that bank?

A. Well, that package had been something like a week; they were in that package; if they had ever been there before I don't know it.

116. X Int. Had B. G. Barrow ever had any bonds on deposit at the bank?

A. B. G. Barrow had special deposits there. I don't know what they were. I think he, perhaps, had a package said to contain bonds.

117. X Int. What bonds?

A. I don't know. My recollection is I gave him a certificate of deposit one time, but whether it was prior to this or subsequent, I don't know, for $75,000 Schuyler County bonds; gave him a certificate in the name of Moses Baker; gave it to him in duplicate; the object in asking he

said was that he wanted to send Mr. Baker something to show what he had done with them, and also to keep a duplicate of it himself.

118. X Int. Give the language of those certificates as near as you can.

A. It runs about, "Moses Baker has deposited in this bank, on special deposit, a package said to contain $75,000 of Schuyler County bonds;" that would be about the language of those certificates.

119. X Int. Moses Baker?

A. I think that was the name.

201 120. X Int. Was Mr. Barrow's name mentioned in the certificate?

A. We aimed to mention both names. The usual way would be this: "B. G. Barrow has deposited for Moses Baker $75,000 Schuyler County bonds on special deposit." That would be about the usual language.

121. X Int. When Mr. Barrow left those bonds for Mr. Baker as a special deposit, what did you do with them?

A. Just put them in the vault, the safe.

122. X Int. When was it he left them first?

A. I could not tell you.

123. X Int. About how long before Mr. Church's visit?

A. I don't know, I just stated, whether it was prior to his visit or subsequent.

124. X Int. Don't you know you never saw the bonds before you finally surrendered them to Mr. Barrow, about a week after Mr. Church's visit?

A. Yes, I know I never saw them before unless it was in a package in that shape. Special deposits left in the bank, I never see them; they would generally bring them in packages.

125. X Int. What became of the certificates you gave Mr. Barrow?

A. I would always take them up when the package was delivered. I very seldom give out certificates on that kind of deposit unless it is requested in cases of——

Mr. MYERS. I am not asking what you seldom do. I am asking you with reference to this specific transaction. Were they delivered up?

A. Yes, sir.

126. X Int. Both the original and duplicate?

A. I suppose they were. I don't remember as to that.

127. X Int. When was that?

A. I don't know, sir.

128. X Int. When the package was first left in the North Missouri Insurance Company did you give any certificate?

A. No, sir.

129. X Int. None whatever?

A. None, at all.

130. X Int. Are you certain of that?

A. I am certain of that.

131. X Int. Don't you remember that the surrender by Barrow
202 of these certificates you had issued to him for Baker was simultaneous, or about simultaneous, with the leaving of the package in the name of the North Missouri Insurance Company?

A. I do not.

132. X Int. Can you say that was not the fact?

A. That was not the fact.

133. X Int. You can say?

A. Yes, sir; there was nothing delivered when I delivered the bonds except on that occasion the order——

Mr. MYERS. You misapprehend my question.

(Question 131 was read.)

A. I could not tell you as to the time these certificates were surrendered. I have no recollection. There were so many transactions of that kind I could not remember.

134. X Int. Where are those certificates Mr. Barrows surrendered?

A. I don't know, sir. We never keep them; destroyed, I suppose.

135. X Int. Did you know Moses Baker, or John Baker, or Mr. Drake was in Macon about the time Mr. Church was there?

A. I did not.

136. X Int. Didn't know anything about it?

A. No, sir.

137. X Int. What did Mr. Barrow give you when you delivered him the $75,000 of Schuyler County bonds?

A. Nothing but that order.

138. X Int. What bonds did you next part with?

A. Possibly the Watkins bonds were next.

139. X Int. That is, the Burlington & Southwestern Railroad bonds?

A. Yes, sir.

140. X Int. To whom did you deliver them?

A. They were delivered at the bank of Tracy and Son for him.

141. X Int. Why were they delivered there?

A. Because that was his place of doing business.

142. X Int. Did de live in Macon at that time?

A. He lived in Macon, but some distance from the business part of town, & and they were sent down from there to be delivered to Mr. Larrabee, and he had them returned, I suppose, to the same place.

203 143. X Int. Who sent them down from there?

A. I don't know, sir. I suppose Mr. Watkins.

144. X Int. Did you deliver them up on a written order from Mr. Larrabee?

A. I don't think I had any order from him to deliver those.

145. X Int. Was any written paper presented to you at the time you delivered them up?

A. There may have been. I am not positive as to that.

146. X Int. What sort of a paper?

A. Well, if any at all, it was something of the character of the other one I spoke of.

147. X Int. The Griffith paper?

A. No; the order for the Barrow bonds.

148. X Int. An order from Mr. Larrabee?

A. If there was any at all it was from him, or some other officer of the company.

149. X Int. What other officer?

A. Possibly the president or the vice-president.

150. X Int. What is your recollection about that?

A. Well, there is one or two of those orders, one I believe, that Mr. Larrabee's name is not to.

151. X Int. Whose name is to it?

A. I think Mr. Williams' name.

152. X Int. What Williams?

A. Col. Williams—John F. Williams.

153. X Int. A defendant in this case?

A. Yes, sir.

154. X Int. He was then president of the company?

A. Yes, sir.

155. X Int. What order is that?

A. I think that is the Watkins order.

156. X Int. Have you got that order?

A. I think I have.

157. X Int. With the other?

A. With the other.

158. X Int. Is it dated?

A. I don't remember; I suppose so.

159. X Int. How does it read?

A. Well, it is simply "Deliver to W. W. Watkins" so many bonds, giving the character.

160. X Int. How many of those bonds were there?

A. I think about $13,000.

161. X Int. Did Defendant Williams sign any other order that was presented to you?

A. There may have been one other signed by him in connection with Mr. Larrabee.

162. X Int. What was that, in respect to what bonds, or what person?

204 A. I am not positive. I think it was in the Schuyler County bonds; possibly his name was to that with Mr. Larrabee.

163. X Int. Schuyler County?

A. Yes, sir.

164. X Int. What is your best recollection about that?

A. That is my recollection. Possibly Mr. Forbes' name was to that too.

165. X Int. Was his name on any other order?

A. No, sir; not that I recollect.

166. X Int. When you delivered up the Schuyler County bonds to Mr. Barrow upon the order stated, you took them out of the package, counted them and saw them, did you not?

A. No, sir; I just took them out of the package; they were put up in the package, different kinds of bonds together; perhaps had a string around.

167. X Int. Each class of bonds?

A. Each class of bonds.

168. X Int. Was by itself?

A. By itself in that package.

169. X Int. Anybody's name on them?

A. No; not that I remember.

170. X Int. Anything to indicate to whom they were to go?

A. No, sir.

171. X Int. Are you sure of that?

A. Not that I remember of. I don't think there was any names on any of them.

172. X Int. You took out the package?

A. I took out the package of Schuyler County bonds. I saw there was no other kinds of bonds. Well, I suppose I counted to see that the amount corresponded with the order. I don't remember I did that; I suppose I did.

173. X Int. You say the bonds you saw were Schuyler County bonds?

A. They were Schuyler County bonds.

174. X Int. Did you ever see those bonds after that?

A. Not that I know of.

175. X Int. Is the same thing true with reference to the Burlington & Southwestern Railroad bonds?

A. Yes, sir.

176. X Int. Did you get any receipt from Tracy for those Burlington & Southwestern Railroad bonds?

A. No, sir.

177. X Int. Nothing but a surrender of the order?

A. That is all.

265 178. X Int. What bonds did you surrender next after the Watkins bonds?

A. I think Mr. Larrabee got the bulk of the bonds when he started down here after that.

179. X Int. Did you deliver any to any one before Mr. Larrabee came down to St. Louis?

A. Not that I remember, sir.

180. X Int. Are you quite confident of it?

A. Well, there were several other packages of bonds delivered on Mr. Larrabee's order. I think they were, perhaps, after he came down there; that is my recollection.

181. X Int. Delivered to whom?

A. Well, some were delivered to Griffith—Byron Griffiths.

182. X Int. Any one else?

A. I think B. G. Barrow got a small amount.

183. X Int. Any one else?

A. Possibly General Jones.

184. X Int. Any one else?

A. That is all I remember; I got orders showing.

185. X Int. What did Mr. Barrow get after Mr. Larrabee took some of the bonds to St. Louis?

A. I think he got some normal school bonds of Adair County; a small amount.

186. X Int. Anything else?

A. Well, he either got a Masonic bond or two, or else Mr. Larrabee did when he came down here; my impression is not clear as to which of those got them.

187. Int. Anything else?

A. That is all I remember.

188. X Int. What did Gen'l Jones get?

A. I think he got a Memphis bond.

189. X Int. What amount?

A. $1,000.

190. X Int. Anything else?

A. That is all.

191. X Int. Who delivered it to him?

A. I believe I did.

192. X Int. Were these deliveries by you on the written order of Mr. Larrabee?

A. Yes, sir.

193. X Int. Are those orders dated?

A. Yes, sir; except the one indicated; the one I spoke of I don't think his name was signed to.

194. X Int. And all of substantially the same import?

206 A. Yes, sir; except the one to Wm. Griffith; that was written about in this way: "You will please deliver to Mr. Griffith certain bonds as indicated by a receipt which he holds."

195. X Int. And at the time of delivery he produced that receipt?

A. At the time of delivery he produced that receipt.

196. X Int. And you endorsed on it what you delivered to him?

A. Yes, sir.

197. X Int. In your handwriting?

A. In my own handwriting.

198. X Int. Did you ever make any such endorsement in any other instance?

A. No, sir.

199. X Int. Have you shown these orders to any body since the commencement of this suit?

A. Yes, sir.

200. X Int. To whom?

A. I have shown them to Mr. Rubey, Col. Williams, & one or two other parties that were interested with me in this suit—my securities.

201. X Int. What did Mr. Williams say when you showed him these orders?

A. He told me he hadn't any recollection of signing them.

202. X Int. Anything else?

A. I don't remember any conversation that passed between us.

203. X Int. To whom were the Omaha bonds delivered?

A. The Omaha bonds were—I think Mr. Larrabee brought some Omaha bonds with him here; he brought a number of bonds down with him, & I think some Omaha bonds were included in those he got.

204. X Int. Did he bring all the Omaha bonds with him?

A. No, sir.

205. X Int. What was done with the others?

A. Mr. Rubey got them.

206. X Int. From whom?

A. Got them out of the package himself.

207. X Int. Did he have any order for them?

A. No, sir; he just took them out; said they were bonds in his custody and claimed them as his.

208. X Int. What did you do when he took them out?

207 A. I didn't do anything. He had as much right to take them as I did.

209. X Int. Did you object in any way?

A. No, sir.

210. X Int. In respect to delivery of any of these bonds, was any objections raised by any of the directors of the company at that time, or at any time?

A. Not that I heard of; I don't—that they knew anything about the manner in which they were delivered.

211. X Int. Did Mr. Larrabee give you a memorandum of the bonds delivered to him?

A. Yes, sir.

212. X Int. That he brought to St. Louis?

A. Yes, sir.

213. X Int. Have you that memorandum?

A. I have that with those other papers.

214. X Int. Do you remember its contents?

A. Just simply a memorandum of the bond that he got, giving the number and kind.

215. X Int. Can you recall what bonds were mentioned in it?

A. I can recall some of them, but not the amounts.

216. X Int. Mention them as far as you can?

A. Well, there were some Macon County bonds issued to the M. and M. Railroad, and some Macon bonds issued to the Omaha Railroad; there was a school bond, a small amount; I think it was issued for some

district in Carroll County. Then there was some stock in the Mound City Life Insurance Company; some stock in the Missouri and Mississippi Railroad Company. These are the only items I remember as to the kind. There was quite a list of different kinds, small amounts most of them, excepting this stock in the Missouri and Mississippi Railway and Mound City Insurance Company.

217. X Int. Did you deliver to him anything besides bonds and stock?

A. No, sir.

218. X Int. No notes.

A. No notes; never saw any notes there except at the office of the insurance company.

208 219. X Int. About what amount of Macon County M. & M. bonds did you deliver to him, as near as you can recall?

A. Well, $4,000 or $5,000 as near as I remember.

220. X Int. And of the Macon County Omaha bonds?

A. Possibly about the same amount.

221. X Int. The school bond was small?

A. Yes, sir; I don't remember.

222. X Int. Mound City stock, how much?

A. I don't remember the amount; I think there was as much as $10,000, anyway.

223. X Int. And M. & M. Railroad stock?

A. My recollection is about $20,000 of that.

224. X Int. Why did you deliver these bonds and stocks to Mr. Larrabee at that time?

A. Mr. Larrabee came & asked me for them and I just delivered them at his request, he being the party interested & having left them there.

225. X Int. Where was the delivery made?

A. At the bank.

226. X Int. During business hours?

A. No, sir.

227. X Int. When?

A. After business hours in the evening.

228. X Int. What was the occasion of the delivery?

A. He said he was coming to St. Louis & he wanted to bring them with him.

229. X Int. Going to St. Louis, what for?

A. He didn't indicate what for.

230. X Int. Was the company moved to St. Louis at that time?

A. It was making preparations to move.

231. X Int. And had determined on the move, had it not?

A. I think so, sir.

232. X Int. And he was taking those bonds there as a portion of its assets that were to be removed to St. Louis?

A. That was my understanding; I don't remember he said so.

233. X Int. That was the understanding at that time?

A. Yes, sir.

234. X Int. Did any one go to St. Louis with him at that time, Mr. Langdeau?

A. I don't know who went with him; I did'nt see him when he started; he left there at night.

235. X Int. Was it understood that Mr. Langdeau was to go along, and that they were to take the notes and other securities of the company with them?

A. I don't know; I did not understand about that.

209 236. X Int. What bonds did you still have in your possession after Mr. Larrabee left?

A. I don't know, sir.

237. X Int. Name them as near as you can.

A. There were but a few. I could not state what they were.

238. X Int. Can you name any of them?

A. Not with certainty; no, sir.

239. X Int. Have you no impression as to any that were left?

A. My impression is they were Macon County bonds of some kind.

240. X Int. Any others?

A. I think not, sir.

241. X Int. Why were they left?

A. I don't know, sir; I didn't ask; he just got the package when he got there and took out such as he wanted.

242. X Int. Did he not leave some that were understood to belong to Mr. Griffith?

A. It is not so understood with me, because Mr. Griffith called there a time or two afterwards, & I told him I had no bonds belonging to him that I knew of. He said Mr. Larrabee was to leave some for him. I told him I didn't know anything about that.

243. X Int. Were not some bonds or other securities left there on the idea that they did belong to other parties and were to be delivered to them?

A. No, sir; there was no such idea with me.

244. X Int. Can you explain why they were left?

A. I cannot.

245. X Int. To whom did you deliver bonds after Mr. Larrabee took the bonds you have spoken of to St. Louis?

A. I think the bonds that were delivered to Mr. Griffith were after he took those to St. Louis.

246. X Int. Did you deliver any to Mr. Barrow after Mr. Larrabee went to St. Louis?

A. I don't remember, sir, as to what—to time—whether it was prior——

Mr. MYERS. Or to Jones?

A. I don't remember.

247. X Int. Who was present at any time when you made any delivery to Barrows?

A. I don't remember that there was any one present except the
210 parties in the office—at the banking-house.

248. X Int. Who was present when you made any delivery to Griffith?

A. I don't remember any one.

249. X Int. Or to Jones?

A. No one that I know of.

250. X Int. Or to Watkins, or to any one for him?

A. I don't remember that there was any persons present except those that were in the office; they were attending to their business, I suppose.

251. X Int. Was either defendant in this case a member of the firm of Tracy and Son at that time?

A. No, sir.

252. X Int. Do you state positively you never saw any printed slips nor any printed statement or schedules in which mention was made of the assets of this North Missouri Insurance Co.?

A. I suppose I have seen the publications that were made by the company in circulars and newspapers.

253. X Int. Were you a stockholder of the company?

A. Yes, sir.

254. X Int. To what extent?

A. I had $3,500 of stock.

255. X Int. Is that all?

A. That is about all I had at any one time; I had off and on more than that—I had disposed of part of it.

256. X Int. Were you managing any stock for any other person?

A. No, sir.

257. X Int. How long did you hold that stock—up to what time?

A. I have got some of it yet; I disposed of part of it either in the fall of 1872, or the early part of the year 1873.

258. X Int. Is that the first you had ever sold?

A. Yes, sir.

259. X Int. What amount was that?

A. $2,500.

260. X Int. To whom did you sell it?

A. I sold it to Mr. Oscar Collins.

261. X Int. Was it fully paid stock?

A. Yes, sir.

262. X Int. For how much did you sell it?

A. I don't know, I traded for a piece of property there in Macon.

263. X Int. What did you put it in at, in the trade?

211 A. I didn't set any value on it. He just made the trade. I was to give him so much stock and so much money.

264. X Int. Did you sell any stock after that?

A. No, sir.

265. X Int. That is the last time you sold?

A. Yes, sir.

266. X Int. How much did you hold from that time on until the time of Mr. Church's visit?

A. I held a thousand dollars paid up stock.

267. X Int. Had you in any way disposed of any by gift or otherwise?

A. No, sir. Well, I did relinquish part of the paid up stock, I believe, to the company prior to his being there—I think after it moved here. Some gentlemen up there who was aiming to reduce the capital stock of the company was getting stockholders to relinquish to the company half of the stock they held, and I relinquished half of the balance of what I was then holding.

268. X Int. When can you produce, and will you produce, the orders and written memoranda of which you have spoken?

A. Just as soon as I go home.

269. X Int. At the time Mr. Church came to the bank to examine the securities spoken of, did you have an impression that those securities did not all belong to the company?

A. I had no impression about it, because I didn't know what was in the package.

270. X Int. Did you suppose the company owned some and had borrowed others for use in the examination by Mr. Church?

A. No, sir; I didn't know anything about it.

271. X Int. Do you remember being examined by William R. Walker, assignee of the company at Macon City, before Austin McGindley, on the 13th of November, 1874?

A. I don't remember the date; I remember being examined once before Mr. McGindley.

272. X Int. You were examined but once, were you, by Mr. Walker before Mr. McGindley?

A. I believe only once. I think I was examined in Mr. Sands' case, perhaps for Mr. Sands.

273. X Int. I do not refer to the Sands case.

212 A. Only once for the Sands case.

274. X Int. I refer to the general examination by the assignee without reference to any particular suit?

A. Yes, sir; I was examined before Mr. McGindley by Mr. Walker only once, I remember.

275. X Int. I hand you that examination and ask if that is your signature to it?

A. Yes, sir.

276. X Int. Did you read that before you signed it?

A. I think I did, sir.

277. X Int. Now, sir, I will read to you a portion of it to refresh your memory. (Reads.) "The aggregate amount of the bonds exhibited to Mr. Church may have been $140,000 or $150,000, but my recollection on this point is very vague. I do not know to whom those bonds belonged. My impression at the time was that they did not all belong to the company. I supposed the company owned some of them, and had borrowed others for use in the examination by Mr. Church." Will you explain that statement made by you in that examination?

A. Yes, sir. Mr. Walker came to Macon, he called in at the office and told me he wanted to examine me before Mr. McGindley in regard to some securities. I asked him what time, and he said about one or two o'clock—I have forgotten the hour, it was early in the evening—and asked me if I could come around. I told him I would try and be 'round at the time; I went round, having been busy up to the time, not having any time to think over anything he would likely ask me, and he examined me without my having had my mind refreshed to anything connected with the examination; the statement there was my impression when those things—when I learned the amount of them thereafter, they had been examined by Mr. Church. I knew that the company didn't own that amount of bonds to my knowledge. If they had gotten them, they had gotten them—I didn't know anything about them, and from
213 the rumor that was around town at that time, I supposed they had borrowed a good portion of those bonds.

278. X Int. I read to you another statement made by you in the examination. "The bonds exhibited to Mr. Church at the bank were, I presume, exhibited to him as the property of the company, at least I inferred that they were so exhibited as the company's property, from the fact that Church had come to Macon to examine the company's assets, and that the bonds in question were exhibited to him without, so far as I heard, any statement being made to Church, leading him to suppose that they were not all of them the property of the company. Mr. Church asked me no questions about the bonds, either as to the ownership or otherwise, and I did not feel called upon to make any explanation to him regarding these bonds." Will you please explain that statement?

A. I could not have made any explanation to him, only from just supposition.

279. X Int. Is that the only explanation you can give?

A. Because I didn't know what was in the package, and didn't know

what bonds would be exhibited to him until after they were exhibited, and I had gone over them for the purpose of giving Mr. Selby—comparing his list, or comparing the list for him.

280. X Int. I read you another statement made by you in that examination, in reference to the list of bonds you made out for Mr. Selby, as follows: "I suppose Mr. Selby saw the list Mr. Church made, and that the former desired me to make a list of the bonds, so that he might compare it with Mr. Church's statement. Mr. Selby did not state that was his purpose, but I inferred that was his purpose"; is that correct?

A. I suppose so; I said nothing to Mr. Selby, nor he to me, about the list of Mr. Church.

281. X Int. Do you remember stating in that examination that you had no memorandum or guide, whereby you could furnish Mr. Walker
214 the names of parties to whom you delivered any of the securities, the date of your deliveries, or the character or denomination of the bonds delivered?

A. I don't remember saying so, though I may have said so; and from the fact that I had at that time lost sight of these orders, and hadn't seen them from the time they were given up to that time, and did not remember having them until this suit was brought, I went to look up to see if I had anything of the kind.

282. X Int. Do you not remember that Mr. Walker pressed you upon that point, & enquired closely as to how it could be, you being a banker, could part with property of that sort without having some memoranda?

A. It is done every day; I don't remember whether he pressed me on that point or not. I do it every day with such packages without taking any memorandum; never do except in cases where the owner sends by a second party for them.

283 X Int. You were present in Macon City, were you not, when Byron Griffiths was examined as a witness in this case?

A. I was, part of the time.

284. X Int. Did you see the two papers he produced, one being a receipt signed A. Larrabee, secretary, specifying the bonds the company procured from him, the other being the agreement signed by F. A. Jones, William Forbes, John F. Williams, A. Larrabee, & B. G. Barrow, guaranteeing the return of the bonds, and on the last of which you endorsed in your handwriting the following: "Delivered to Mr. Griffiths, $8,500 Knox County bonds, $2,500 Macon County do. M. M. J. B. Melone." Did you see Mr. Griffiths produce those papers?

A. Do you mean at the examination?

285. X Int. At that examination.

A. I saw the papers there, but didn't read them; I saw them in the hands of an attorney and heard them read, I believe.

286. X Int. You remember making that endorsement, do you?

A. It had slipped my memory until the matter was called up.

215 287. X Int. But you remember it now?

A. I remember now it was made.

288. X Int. And you made the delivery at the time you made the endorsement?

A. I suppose so.

289. X Int. Have you no recollection of what is the fact?

A. I don't recollect; I have no recollection to the contrary. I presume it was made at the time.

290. X Int. You are unable to state that was the fact?

A. Yes, sir.

291. X Int. Do you remember where the delivery was made?

A. It was made at the bank.

292. X Int. Whether any one was present at the time, you do not remember?

A. I do not.

Mr. MYERS. That is all, except you will produce those orders to be annexed?

A. Yes, sir.

Redirect examination by Mr. WILLIAMS:

124. Int. You stated that at the time you exhibited these orders to Col. Williams, he stated he had no recollection of them. I wish you would state, if he didn't state at that time, that he had no recollection of this Griffith guarantee, and what he did state in reference to the other orders?

A. Well, the conversation had at that time, I think, was principally in connection with the Griffith order or the Griffith guarantee. I think you stated, possibly, that it had slipped your memory until Mr. Watkins had said something to you about the order signed for his bonds, but that you did remember the Barrow order. In stating my answer on the cross-examination, in regard to that, I think I simply stated that you said you didn't remember anything about them. I remember distinctly you spoke of remembering the Barrow order, but the other two had slipped your memory.

125. Int. I will ask you if the Watkins bonds hadn't been returned to Tracy's bank before I signed that order to you to deliver them
216 to Watkins, as Watkins & Larrabee had directed you?

A. My impression is, they had been.

Recross-examination by Mr. MYERS:

294. X Int. You say the Watkins bonds were delivered before Col. Williams signed the order for them?

A. I think so.

295. X Int. Did you see him sign the order?

A. Yes; that is my recollection.

296. X Int. Where did he sign it?

A. I think, at his office.

297. X Int. What office?

A. His law office; that is my recollection.

298. X Int. Who was there at that time?

A. I don't remember there was any one.

299. X Int. Why did you get his signature after the bonds had been delivered?

A. My recollection about it is this; that those bonds were being delivered at different times, and I felt I ought to have something to show where they went; and I went and told Col. Williams that Mr. Larrabee had requested me to deliver those bonds to Mr. Watkins, and I had done so, but had nothing to show for them; and as they were being delivered out in that way, I wanted something to show.

300. X Int. You had Larrabee's order to show for it?

A. It was only verbal.

301. X Int. Why did you not take it in writing from Mr. Larrabee, & why was not that sufficient?

A. Because he was passing and had just spoke to me about it on the street or in the office; I don't recollect which. Mr. Watkins was not present.

302. X Int. Why were you not satisfied with Larrabee's written order.
A. I didn't have his written order.
303. X Int. Why did you not get it and rest satisfied with it?
A. I don't know why I didn't get it; it would have satisfied if I had had it, but I didn't have it.
304. X Int. Did Mr. Larrabee sign that order also?
A. No, sir.
305. X Int. At the time you got that order, did you tell Mr. Williams you had delivered the bonds already?
217 A. I think so.
306. X Int. And explained to him why you wanted the order?
A. That is my recollection.
307. X Int. Who was present at that time?
A. I don't remember that there was any one.
308. X Int. Did you speak of the fact that you were delivering bonds to different people at different times, and that you wanted to be safe in the matter?
A. I don't know that I spoke to him of that fact.
309. X Int. What is your impression as to whether you did or not?
A. Well, I don't know that I have an impression as to whether I did or not; possibly did, but I don't remember. That was my feeling in the matter. Let me say here, packages of that kind wouldn't need any order from the owner, more than a verbal order, but for the fact that it was being delivered in partial amounts at different times, and it was necessary for me to have something to show where they went.
310. X Int. Ordinarily, however, if a depositor of a special deposit called for a part of his package, you would let him take whatever he wished?
A. I would hand it to him & let him take out what he chose; but if he sent some one else to take a part, I would want something to show what he took.
311. X Int. Or if he sent some one for the whole, you would want a written order?
A. Yes, sir; I would want an order to deliver a certain package. If he came to me and told me verbally to give a certain package to anybody, I would do it.
312. X Int. In this particular instance, Mr. Larrabee's verbal order to you was not sufficient?
A. I preferred something more.
313. X Int. When did you resign as a director, or when did your term of office expire?
A. I think it was about the 20th of June, 1873; in June, I
218 know. I don't remember the exact date.
314. X Int. It was after the company had moved to St. Louis?
A. It was while it was in process of moving.
(Signature waived.)

In the district court of the United States for the eastern district of Missouri. In equity.

WILLIAM R. WALKER, ASSIGNEE NORTH Missouri Insurance Company, complainant,
against
JOSEPH T. REISTER ET AL., DEFENDANTS.

James B. Melone, of the city of Macon, in the county of Macon and

State of Missouri, being by me first duly sworn, on his oath deposes and says that the orders for bonds deposited in his hands by Albert Larrabee, secretary of the North Missouri Insurance Company, referred to in deponent's deposition heretofore taken in the above-entitled cause at St. Louis, Missouri, are six in number, and are hereto annexed, marked, respectively, Exhibits No. 1, No. 2, No. 3, No. 4, No. 5, and No. 6.

Deponent further states that Exhibit No. 1 is in the handwriting of B. G. Barrow, and is signed by John F. Williams, Albert Larrabee, and William Forbes, with all of whose signatures deponent is well acquainted; that Exhibit No. 2 is in the handwriting of this deponent, and is signed by John F. Williams; that Exhibit No. 3 is in the handwriting of this deponent, and is signed by said Albert Larrabee; that Exhibit No. 4 is in the handwriting of said B. G. Barrow, and is signed by A. Larrabee; that Exhibit No. 5 is in the handwriting of and signed by said A. Larrabee; that Exhibit No. 6 is in the handwriting of and is signed by the said A. Larrabee; and that the signatures to all of said exhibits are the genuine signatures of the parties whose names appear thereto, with the exception of A. Larrabee's signature to Exhibit No. 1.

219 And deponent further states Exhibit No. 1 was presented to deponent on or about the 29th day of May, 1873, by B. G. Barrows, and as it then purported to be an order upon deponent as treasurer of the North Missouri Insurance Company, deponent refused it, saying to Mr. Barrow that he, deponent, had no bonds as treasurer, and handed the order back to him; and that the said Barrow afterwards, and on or about the day last aforesaid, presented to deponent the said order, marked Exhibit No. 1, erased and interlined as it now appears. Deponent further says that he, this deponent, never in any way or to any extent made any change on said order.

Deponent further says that he believes the signature, "A. Larrabee," to Exhibit No. 1 is in the handwriting of C. H. Langdeau, an employee of said company, who assisted Mr. Larrabee in his duties as secretary.

J. B. MELONE.

Subscribed and sworn to before me this 4th day of November, 1876.

AUSTIN N. McGINDLEY,
U. S. Com'r, Western District Mo.

It is hereby agreed that the foregoing affidavit shall be considered part of the deposition of the above-named James B. Melone, heretofore taken in the above-entitled cause, and that said affidavit may be read and used in evidence on the hearing of said cause with the same force and effect as if it were incorporated into and formed a part of said deposition, and all objections to the use thereof on the ground of irregularity or want of form are hereby waived.

WILL'M R. WALKER, *Pl'ff.*
EDMUND T. ALLEN,
Of Counsel for Respondent.

EXHIBIT No. 1.

OFFICE OF NORTH MISSOURI INSURANCE CO.,
May 29, 1873.

J. B. Melone, cashier Nation' Savings Bank, treasurer of said North Missouri Insurance Company, on spe. deposit, will deliver to B. G. Barrow seventy-five bonds of Schuyler County, 1,000 ea., issued to

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the Missouri, Iowa & Nebraska Railway Company, as being in your hands as cashier, & this shall be your receipt for same.

JOHN F. WILLIAMS, *President*,
A. LARRABEE, *Secretary*,
WM. COBBES, *Vice-President*,
Directors.

EXHIBIT No. 2.

OFFICE N'TH MO. INS. CO.,
May 31st, 1873.

J. B. MELONE:

Please deliver to W. W. Watkins 13 B. & S. Western R. R. bonds of $1,000 ea., & 6 Macon Co. R. R. bonds of $500 ea., Nos. 102, 103, 104, 105, & 106, out of package left by A. Larrabee, sec'y North Mo. Ins. Co.

JOHN F. WILLIAMS, *Pres't*.

EXHIBIT No. 3.

(In pencil:) Rec'd the within bond & security, Jun' 13, '73.
A. LARRABEE.

THE NATION' SAVINGS BANK OF MACON,
Macon, Mo., , 187 .

Mr. :

Your in favor of for the sum of ——— dollars will be due at this bank inst. Please protect it.
Yours, truly,

———— ————, *Cashier*.

(Enclosure written in lead-pencil:)

Clark Co. R. R. bonds, #145, 149, 26, 98, 146		$500 each.
Macon Co. M. M. R. R. bond No. 2		$1,000
131		500
128		500
123		500
14, 50 ea		700
221	Nos. 18, 15, 20, 19, 24, 13, 26, 27, 12, 95, 88, 96, 16, 23, 10 M. stock in Mound City Life Ins. Co., M. M. R. R. stock.	21,000
Macon Lodge		100
Linn Co. school		240
Carroll Co. school		100

Macon Co. (L. T.) Nos. 500 each, 7 bonds, # 1, 13, 31, 33, 34, 37.
Macon Co., M. In. T. 11, 500 ea., # 80, 79, 78, 32, 18, 17, 16, 15, 13.

EXHIBIT No. 4.

ST. LOUIS, *June* 23, 1873.

J. B. MELONE, Esq.:

Please let B. G. Barrow have several normal school county bonds, Adair County.

A. LARRABEE, *Sec'y*.

EXHIBIT No. 5.

[North Missouri Insurance Company. John F. Williams, president; A. Larrabee, secretary. Capital, $500,000.]

ST. LOUIS, *July 5th*, 1873.

To J. B. MELONE, Esq.,
Macon, Mo.:

MY DEAR SIR: Please deliver to Griffith his bonds, as indicated by receipt which he holds, and oblige,

Yours, truly,

A. LARRABEE, *Sec'y.*

222 EXHIBIT No. 6.

[North Missouri Insurance Company. Jno. F. Williams, president; A. Larrabee, secretary. Capital, $500,000.]

ST. LOUIS, *July 7th*, 1873.

To J. B. MELONE, Esq.:

Please deliver to Gen'l F. A. Jones one Memphis, Scotland Co. bond, No. 27, one thousand dollars.

Yours, truly,

A. LARRABEE, *Sec'y.*

For statement to insurance department of Missouri, filed 1st February, 1873, see end of transcript.

The deposition of Webb M. Rubey, taken before Edmund T. Allen, a United States commissioner in and for the eastern district of Missouri, in the city and county of Macon, on the 5th day of November, A. D. 1875, on the part of plaintiff.

WEBB M. RUBEY, having been first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, was carefully examined upon interrogations by Nathaniel Myers, of counsel for plaintiff, and did thereupon depose, testify, and say as follows:

1st. Int. State your age, residence, and occupation.

A. Forty years of age; reside in Macon; I am a lawyer by profession; occupation, most anything. I have followed one thing and another.

2nd. Int. Were you ever connected with the North Missouri Insurance Company?

A. Yes, sir.

3rd. Int. How?

A. I was for a short time director, and for about the space of
223 two months, while acting as director, I acted as vice-president. That was in 1869 and 1870.

4th. Int. Were you ever connected with it in any other manner?

A. No, sir; nor since that time.

5th. Int. Did you ever have the possession or custody of any bonds or stocks claimed to belong to that company?

A. No, sir.

6th.

7th. Int. Do you know anything of a package of bonds brought to you during the year 1873 by James G. Howe?

A. I don't remember his bringing me any bonds, though he may have done so. I got a package of bonds which came from Mr. Larrabee, as treasurer and financial agent of the St. Louis, Macon and Omaha R. R. Co. I was director and treasurer of that railroad company, and was his successor in office, and these bonds were delivered to me in that capacity.

8th. Int. How many bonds were there?

A. $29,000.

9th. Int. Thousand-dollar bonds?

A. Some thousand and some five hundred. I think they were all five hundred.

10th. Int. Where was the delivery made to you?

A. I suppose in my office, at that time the Macon Savings Bank. Malone was its cashier; I was its assistant cashier; Epperson or Wines was its president; Mr. James B. Malone was cashier; I was assistant cashier.

11th. Int. How were these bonds done up?

A. I don't know that they were done up at all, except folded. They may have been wrapped in a paper.

12th. Int. Any endorsement on the back of the package?

A. I don't remember. These bonds were bonds issued by Macon County in the name of Liberty and Hudson townships, for stocks subscribed by those townships to the St. Louis, Macon and Omaha R. R. Co.

13th. Int. Were there any other bonds in that package?

A. No, sir.

14th. Int. Did you at any time get any other bonds from Larabee
224 or any officer of the North Missouri Insurance Company?

A. No.

15th. Int. At the time these bonds were given you, did you deliver up any receipt?

A. I presume I receipted for them as his successor.

16th. Int. Had you ever had those bonds in your possession before that time?

A. Never saw them before that time that I know of.

17th. Int. Did you ever have them in your custody before that?

A. No, sir.

18th. Int. That was your first connection with these bonds?

A. Yes.

19th. Int. Do you remember when that was?

A. That was in the latter part of 1872 or early part of 1873.

20th. Int. Was that before the visit of Superintendent Church to this city?

A. Yes, sir.

21st. Int. Prior to the month of May, 1873?

A. Yes, sir.

22nd. Int. You never had in your possession or custody any other bonds that were claimed to belong to the North Missouri Insurance Company?

A. No, sir.

23rd. Int. Did you ever part with the possession of these bonds after you received them?

A. Never, that I know of, excepting to let Mr. Larrabee, who was one of the directors of the Omaha Railroad Company, look at them.

24th. Int. What did he want to look at them for?

A. I don't know, sir.

25th. Int. Where did he look at them?

A. I delivered them to him at the bank. I kept them in a loose package in the vault, lying frequently on top of the safe and sometimes in the safe. I handed them to him over the counter.

26th. Int. Who was with him when you handed them to him?

A. No one.

27th. Int. Did he take them away?

A. I do not know, sir; but the time I gave them to him I think he was looking at them over the counter, and I told him if he took
225 them away he must not do so without leaving a memorandum. I don't know what he did with them, whether he took them out of the house or not. I went out, and came in either that evening or next day and found the bonds there returned.

28th. Int. When he took them, did he leave you any memorandum?

A. Yes, sir.

29th. Int. What was the substance of it?

A. Merely that he had received those bonds—the Omaha bonds—a line or two; I don't remember the contents. It was merely an informal memorandum, a short note or memorandum, merely that he had them.

30th. Int. It didn't set out the purpose he got them for?

A. No.

31st. Int. You were the treasurer of that railroad company?

A. Yes, sir.

32nd. Int. What right had he to take away those bonds?

A. He had merely the right to look at them and examine them as the property of the company as a director. Any of the directors, I suppose, were permitted to look at any of those papers.

33rd. Int. Couldn't he have done so at the bank?

A. May be he would have done so, or could have done so, had I remained in there.

34th. Int. Did this occur at or about the time of the visit of Superintendent Church to Macon?

A. I suppose, from what I have learned of Mr. Church's visit, that it was about that time.

35th. Int. Did you see Mr. Church?

A. I think I saw him here at one time. I didn't know him.

36th. Int. Where did you see him?

A. I think I saw him in the bank—at the counter—at one time.

37th. Int. With whom did he come?

A. I think Mr. Larrabee was with him at that time.

38th. Int. What took place at that time?

A. Well, I don't know that I can tell you. It was at the front
226 counter, and Mr. Malone was standing at the counter at the time. Some conversation took place between them. I don't know what it was.

39th. Int. Between whom?

A. Between Mr. Malone, as cashier, and Mr. Larrabee and Mr. Church. I think that was the time I saw him.

40th. Int. You have no doubt that was the time?

A. I think I saw him in there.

41st. Int. Did Mr. Church go into the back room of the bank?

A. I don't know.

42nd. Int. Do you know that he went in there to make examination of certain bonds claimed to belong to the North Missouri Insurance Company?

A. No, sir; I don't know what he came there for.

43rd. Int. You have no impression as to whether he went in behind the counter at all?

A. I never saw him, sir; I don't know that he ever did.

44th. Int. Do you know anything of a package of bonds kept in the vaults of that bank marked "North Missouri Insurance Company," or claimed to belong to the North Missouri Insurance Company?

A. I remember of one package that was left there.

45th. Int. What sort of a package was that?

A. It was a large envelope, I believe. I think it was; if not, it was folded paper in the form of an envelope.

46th. Int. How thick a package?

A. I have an idea that it was about somewhere from one to two inches.

47th. Int. What did it contain?

A. I don't know, sir.

48th. Int. How was it marked?

A. I think it was marked—I couldn't say positively how it was marked—but it was either "A. Larrabee" or "North Missouri Insurance Company." I don't know which.

49th. Int. Where was it kept.

A. The one I allude to was handed to me (I was acting as cashier) with the request to lay it in the safe, and I did so.

227 50th. Int. Handed to you by whom?

A. I don't remember who. Some gentleman came in and handed it in there, but I positively could not state who the party was.

51st. Int. What is your impression?

A. I don't know who it was.

52nd. Int. What is your impression; what is your best belief?

A. Well, sir, I haven't any definite belief as to the name of the person who it was. The matter was a matter that I knew nothing of at the time. It was just as men will frequently step in and say leave that in your safe; and we have been in the custom of taking such packages; and we had the only fire-proof vault in the town at the time, and such things were so common that I paid no attention to the parties.

53rd. Int. Were you told what sort of bonds they were?

A. No. Nothing was passed except what I have said.

54th. Int. Was it B. G. Barrow that brought them in?

A. No, sir; not that I remember.

55th. Int. Was it A. Larrabee?

A. I think not.

56th. Int. Was a man by the name of Baker?

A. No Baker that I know of.

57th. Int. Or Drake?

A. No, sir.

58th. Int. Was it Griffiths?

A. I don't remember that it was Griffith.

59th. Int. How do you know that it was claimed to belong to the North Missouri Insurance Company?

A. I don't know that it was. It was just said leave these in the safe for whoever it was addressed to. I don't know that anything further was said than lay it in the safe. I just passed back and threw it into the safe.

60th. Int. Did you ever have it in your hands again?

A. I don't know that I did, unless in handling papers through the vault there.

61st. Int. Do you know what became of it?

A. I do not know, sir. I was temporary cashier, and as my business was to superintend book-keeping; but, in the absence of Mr. Ma-
228 lone, I took his place at the counter.

62nd. Int. Where was Mr. Malone at that time?

A. He may have been at dinner; I seldom acted except when he was out.

63rd. Int. Was that about the time of Mr. Church's visit?

A. I suppose it was from what I have learned since.

64th. Int. You saw him?

A. Yes; but I don't remember what year or date it was that I saw him.

65th. Int. You had nothing to lead you to suppose that they were left with you to be exhibited to Mr. Church?

A. Nothing in the world, sir.

66th. Int. How thick a package was that?

A. One to two inches.

67th. Int. You gave no memorandum or receipt for it?

A. No.

68th. Int. Did you call Mr. Malone's attention to it when he came in?

A. I don't remember.

69th. Int. How would you know how to deliver it?

A. It had its mark on it. Our packages always had their marks on them.

70th. Int. Who marked that?

A. I don't know.

71st. Int. Do you know that you did not?

A. I know I did not. I never touched except to put it in the safe.

72nd. Int. Why didn't you put on it the name of the depositor?

A. It never occurred to me that there was any necessity for it.

73rd. Int. You mean to say you have no idea who that person was that brought that package in?

A. I could not state with any certainty.

74th. Int. You understood my question. I am not asking you to state with certainty. Do you mean to say that you have no idea?

A. I do not know who it was. If I knew the man's name I would state it. If I should make a statement it would be a guess.

75th. Int. If you have any idea at all as to who it was, to whom does that point?

A. I have thought of that, sir. I don't know who it was. It is too indefinite for me to state.

76th. Int. To whom does it point as far as it exists to any
229 degree?

A. If I were to give a mere supposition or impression as a vague recollection of it, it would seem to me that it would be some of the men, one of two men who were collecting in Tracey's bank, or Jones.

77th. Int. F. A. Jones?

A. Yes, sir; but as I tell you, I give it as an impression.

78th. Int. Who are these two parties you refer to?

A. One man is named Hughes and I don't remember the name of the other one. I don't know who he was.

79th. Int. You have no idea pointing toward any one else?

A. That is as near a recollection as I have. It seems to me that I saw such a man.

80th. Int. Did you ever see the party again who brought the package in reference to the package?

A. No, sir.

81st. Int. Was there any endorsement as made on the package indicating who had left it?

A. I don't know, sir. I didn't examine it with any degree of care in the world.

82nd. Int. You didn't return it to any one?

A. No.

83rd. Int. How long was that package left at your bank?

A. I don't know, sir. I don't know anything further about it.

84th. Int. Was it there as long as a month?

A. I don't know, sir. I don't know anything further about it.

85th. Int. Did you from any source receive any impression as to its contents at any time?

A. No, sir.

86th. Int. What leads you to think it must have been one of those parties?

A. Nothing more than what would lead you to think of what happened to occur, about which you would have no definite recollection—you would have a vague impression.

87th. Int. Was it a matter that concerned Tracey?

A. I don't know.

88th. Int. Was he connected with the North Missouri Insurance Company?

A. Not that I know of.

89th. Int. Mr. Tracey was a banker here?

A. Yes.

90th. Int. In what did you keep the property of the railroad company of which you were treasurer?

230 A. In the bank. As I stated, they just simply laid inside the safe, and sometimes outside of it in the vault.

91st. Int. In what were the bonds of the insurance company kept?

A. I don't know, sir, of anything kept there.

92nd. Int. What leads you to think that this package which you have last mentioned belonged to the insurance company, which was left by this unknown party?

A. My recollection of it is that it was marked either Larrabee or North Missouri Insurance Company; but I don't recollect who it was.

93rd. Int. That is a different package from that which you first ferred to?

A. Yes.

94th. Int. Was it as large a package as that of the Omaha bonds?

A. No, sir.

95th. Int. Was it near as large?

A. It was wider and perhaps longer—about as long, and some wider, while this other package was thicker—the Omaha bonds were thicker.

96th. Int. The package of Omaha bonds was thicker and about the same length as the other, and not so wide; was it twice as thick?

A. I suppose so.

97th. Int. How many bonds were there in the Omaha bonds?

A. About sixty bonds. The Omaha bonds were very large bonds, and had twenty years' coupons, which made a double bond you might say.

98th. Int. Did you ever see any Schuyler County bonds in that bank?

A. Not that I know of, sir.

99th. Int. Do you know a man named Byron Griffiths?

A. I knew a paralytic man by the name of Griffith. I don't know what his given name is.

100th. Int. Did you ever see him in that banking-house in connection with or in respect to any bonds?

A. Not that I know of, sir; he has been in the bank hundreds of times, sir, perhaps.

101st. Int. Did you ever know of his getting any bonds from Mr. Malone, or leaving any there?

A. No, sir.

231 102nd. Int. Do you know a man named Watkins, now of Chicago?

A. Yes, sir.

103rd. Int. Did you ever see him in your bank?

A. Frequently, sir.

104th. Int. Did you ever know him to be there in respect to leaving or getting any bonds?

A. No, sir.

105th. Int. Did you ever know of Mr. Malone, or yourself, or of any one in Malone's bank, being in possession of any bonds that had come from either Griffiths or Watkins?

A. No, sir.

106th. Int. Or of Larrabee having or leaving such bonds?

A. No, sir.

107th. Int. Do you know of B. G. Barrows, or a man named Drake or Baker, bringing any Schuyler County bonds to that bank?

A. No, sir.

108th. Int. Did you know of any package of bonds being kept at that bank claimed to belong to the North Missouri Insurance Company, about seven or eight inches in thickness?

A. No, sir.

109th. Int. Did you know of any such package of that thickness?

A. No, sir. I have seen various packages in there, but I don't know what they were.

110th. Int. Had no information from any one?

A. No.

111th. Int. No marks on them to indicate?

A. I don't remember of any marks that indicated anything but individual names.

112th. Int. Never saw any package of the North Missouri Insurance Company?

A. Only the one I have referred to.

113th. Int. Were you a stockholder of the North Missouri Insurance Company about that time?

A. Very little; about $400.

114th. Int. Mr. Malone was treasurer of the insurance company at that time, in May, 1873?

A. Yes, sir. I believe so.

115th. Int. Do you know of his being in possession of any bonds claimed by any one to belong to the company?

A. No, sir.

116th. Int. Or the bank of which he was cashier being in possession of any?

A. Nothing more than I have stated.

117th. Int. Did you ever sign or see any receipt or memorandum

232 given to Larrabee or the insurance company for any bonds left at that bank?

A. No, sir.

118th. Int. Now you say Mr. Larrabee got from you the railroad bonds?

A. At one time he did.

119th. Int. How long did he have them?

A. Well, sir, I would say for not longer than a day and a half. I think it was midday when I let him have them, and I don't know whether it was that evening or the next day it was that he had returned them. You understand that I was only partially connected with the bank. I attended to the books, and attended to my law business and tobacco and other business. I came in there that evening or the next day to see that he had returned and found them there.

120th. Int. Who brought them back?

A. I don't know, sir.

121st. Int. They were not delivered to you in person?

A. No, sir; they were left for me.

122nd. Int. Are you satisfied that he had them as much as a day?

A. Well, I couldn't state any more definitely than what I have.

123rd. Int. Where did you first get these bonds?

A. I got them through him; but I don't know whether he delivered them to me or sent them by Mr. Howe.

124th. Int. Did you get them from Gayford & Co., of St. Louis?

A. No, sir. I went there for them at one time and couldn't get them, some time prior to the time of my getting them from Larrabee. They were there as Larrabee's property.

125th. Int. You were examined in the matter of this insurance company by Mr. Walker on the 14th of November, 1874?

A. Yes, sir.

126th. Int. Were your statements different then from what they are now?

A. I don't know. I kept no memorandum of them, sir. I will state this: that at that time the matters were much less fresh in my mind, and there may have been some inaccuracies at that time.

127th. Int. You didn't take Mr. Church a package of bonds, or
233 Mr. Selby, when they were here examining the property of the company?

A. No.

128th. Int. Did you see Mr. Selby when he was here?

A. Not that I know of. I have no recollection of seeing Mr. Selby, even of having him pointed out to me on the street.

129th. Int. Who else had charge of the vaults at the bank besides yourself and Mr. Malone?

A. Mr. Sharp and my brother—a young man by the name of Sharp and T. S. Ruby.

130th. Int. Are they there at the bank now?

A. Yes, sir. As to the vault where the books were, the men I have named had access to the vault where the books were, but the safe they did not have access to.

131st. Int. Were there any bonds of the insurance company kept in the safe?

A. Not that I know of.

132nd. Int. You had access to the safe, had you not?

A. Yes, sir.

Cross-examination by Mr. ALLEN:

1st. X Int. What was the denomination of the Omaha bonds?

A. My recollection is that they were all five-hundred-dollar bonds.

2nd. X Int. Do you know whether or not the North Missouri Insurance Company ever became the owner of these $29,000 railroad bonds?

A. I certainly never heard or knew that it was, sir.

3rd. X Int. After these bonds were returned to you, as you have stated, after the examination of them by Mr. Larrabee, what became of them?

A. As soon as the decision of the supreme court declaring them null and void, I delivered them to the county court of Macon County for cancellation, and they were destroyed by them.

4th. X Int. At the time they first came into your possession whose property were they?

A. The St. Louis, Macon & Omaha Air-Line Railroad Company's.

5th. X Int. If you know, state how they became the property of that railroad.

A. In payment of stocks subscribed by Hudson and Liberty Townships. Of Liberty Township the court in that decision said they were invalid subscriptions.

234 6th. X Int. Can you state from your own knowledge whether there was any transfer of those bonds from the time they came into the possession of the railroad company, as you have stated, to the time of their cancellation?

A. I can state that there never was any such transfer.

7th. X Int. You have stated in your direct examination that when you became the treasurer of that railroad those bonds were in the possession of Gaylord and Co., in St. Louis. Can you state how Gaylord and Co. became possessed of these bonds?

A. I can only say from what they told me, and I can say also from a receipt that Gaylord and Co. gave when they received the bonds.

(Objected to.)

That receipt was a receipt given to A. Larrabee and James R. Alderman in individual capacity. That was the reason that Gaylord and Co. would not recognize my order from the board for them as treasurer.

8th. X Int. Do you know what became of that receipt?

A. It was given at one time by Mr. Larrabee to me, and then returned by me to him by an understanding and direction of the board in order that he might go and get those bonds. After returning the receipt to Mr. Larrabee, I presume that he returned the receipt to Gaylord and Company.

Re-examination by Mr. MYERS:

133rd. Int. When did the railroad company first become possessed of those bonds?

A. In 1869 or 1870.

134th Int. Were you then connected with it?

A. No, sir.

135th Int. When did you first become connected with the railroad company?

A. I think it was at the January elections, or about that time, in 1872.

136th Int. And yet you have undertaken to testify that a railroad company with which you were not connected for several years never parted with bonds that it had for several years while you were not connected with it. Now is it not true that you have been testifying

235 rather to your opinions and conjectures than to your knowledge.

A. I have not testified from conjecture. I had possession of the records of that company, and found no record of any such thing, and it had

connection with the parties interested in it, and I had no information in regard to it. I don't pretend to have any personal knowledge further than I have stated to you.

137th Int. How long were you treasurer before you came into possession of these bonds?

A. I should think a year and a half, about that time—a year and a quarter may be.

138th Int. What Mr. Larrabee did with the bonds while he had them you do not know?

A. I do not.

139th Int. They were negotiable bonds, were they?

A. I don't know about that. I couldn't repeat the language of them. They were drawn as bonds of that character usually are, sir.

140th Int. When you say the North Missouri Insurance Company never acquired those bonds, you testify again not of your personal knowledge?

A. I testify from the year 1872, when I was treasurer & a director.

141st Int. And then only when you were actually in the custody of them?

A. Yes. The board never sold them, or made any transfer of them, while I was a member of it.

142nd Int. Was John F. Williams connected with that railroad?

A. No, sir, not to my knowledge; not as a director or otherwise.

143rd Int. Was George B. Glaze?

A. No, sir.

144th Int. John M. London?

A. No, sir.

145th Int. Philip T. Holman?

A. No, sir.

146th Int. Isaac Hays?

A. I think not.

147th Int. James B. Malone?

A. No, sir.

148th Int. Who were its directors?

A. Well, sir, I will tell you those elected at the time I became a director: R. H. Overall, J. L. Shortridge, P. M. Wright, George M. Taylor, A. Larrabee, myself, & Fletcher White.

149th Int. Was either of the parties I have mentioned con-
236 nected with your county court?

A. No, sir.

150th Int. Do you know how those thirty or forty thousand dollars of bonds came to be used by that insurance company as its property, and to be included in its sworn statements as its assets?

A. No, sir; I do not.

151st Int. You have no impression as to that at all?

A. Yes, sir; I have an impression.

152nd Int. What is it?

A. That Larrabee, while he had them in his possession, used them, if they were used, in that way.

153rd Int. And without any one's knowledge or consent?

A. I don't know about any one; without any one's consent as far as I know.

154th Int. If they were exhibited to Superintendent Church, of Ohio, by Mr. Malone, as property of the company, and if they were exhibited to Superintendent Selby, of Missouri, by Mr. Malone, as the property of the company?

A. I don't know that it was done; and, if done, don't know how it came to be done.

155th Int. If Mr. Larrabee used them, as you say, so far as you know, it was without the knowledge, consent, or suspicion of any of the parties I have mentioned?

A. Yes, sir.

156th Int. Do you know it as a fact that printed circulars and abbreviated statements of the condition of the North Missouri Insurance Company, on one page of paper in print, and including among their assets these particular bonds of which we have been speaking, were circulated far and wide all over this town, and some of them came into your possession, and were seen by you?

A. I never saw such, and know nothing of it whatever. If there ever were any such thing, I never saw it, and never had any knowledge of it.

Recross-examination by Mr. ALLEN:

9. X Int. Was there ever any claim or pretence that these
237 bonds had ever been transferred or acquired in any way by the North Missouri Insurance Co.?

A. Not to my knowledge, sir, or hearsay. You might say, even, I never heard of any such claims.

10. X Int. Will you produce to be annexed to this deposition, the numbers of the bonds?

A. The following are the bonds that were turned over: Hudson Township bonds, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, all $500 bonds.

Liberty Township bonds, 2, 3, 4, 5, 6, 7, 8, 9, 32, 38, all $500 bonds.

(Signature waived.)

The deposition of James G. Howe, taken before Edmund T. Allen, a United States commissioner in and for the eastern district of Missouri, in the city and county of Macon, on the fifth day of November, A. D. 1875, on the part of the plaintiff.

JAMES G. HOWE, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter in controversy aforesaid, *I* was carefully examined upon interrogation by Nathaniel Myers, of counsel for plaintiff, and did thereupon depose, testify, and say as follows:

1st. Int. State your age, residence, and occupation.

A. My age is 42 years. I reside in Macon City, Missouri; am deputy county clerk of Macon County.

2nd. Int. Were you connected ever with the North Missouri Insurance Company?

A. Yes, sir.

3rd. Int. In what capacity?

A. I was what was termed agents' book-keeper for a time, and in addition to that, cashier.

4th. Int. Anything else?

A. No, sir.

238 5th. Int. From what time to what time did you hold these positions?

A. I held the position of agents' accountant or book-keeper from the first of December, 1871, until the company went into bankruptcy.

6th. Int. And cashier?

A. I think from the first of September to bankruptcy.

7th. Int. Had you the custody, or charge, or possession during any of the time of any of the stocks or bonds of the company?

A. I did not.

8th. Int. Did you assist in listing or scheduling them?

A. No, sir.

9th. Int. Did you assist in their removal to St. Louis?

A. No, sir; there was nothing ever in my possession except money. I just handled the money, checks, &c. I never had any of the bonds, or anything of that kind in my possession—never handled them.

10th. Int. When did the company move to St. Louis?

A. In the month of June, 1873.

11th. Int. Do you know what bonds or stocks were taken to St. Louis?

A. I do not.

12th. Int. Do you know who took them?

A. I do not.

13th. Int. Do you know whether the company parted with any of its bonds or stocks before removing to St. Louis?

A. I do not.

14th. Int. Did you ever see any Schuyler County bonds in the custody of any officer of the company?

A. No, sir.

15th. Int. Did you ever see any bonds of that kind, that the company owned, or claimed to own, anywhere?

A. No, sir; not to the best of my recollection.

16th. Int. Or Macon County bonds?

A. I don't think that I ever saw—I don't know that I ever saw any of the bonds that belonged to the company.

17th. Int. Or any that were claimed to belong to it?

A. I did see a bundle said to have contained bonds, but I did not see the bonds at all.

18th. Int. Where did you see that bundle?

239 A. I carried it from the office down town.

19th. Int. From what office?

A. From the insurance office.

20th. Int. What town?

A. I carried them and delivered them to Mr. Web M. Rubey.

21st. Int. Who gave them to you at the company's office?

A. Mr. Albert Larrabee.

22nd. Int. What remark did he make to you at the time?

A. He directed me to take them down and deliver them to Mr. Rubey.

23rd. Int. Did he say what sort of bonds they were?

A. No.

24th. Int. (Did he say what sort of.) You did deliver them to Mr. Rubey?

A. Yes.

25th. Int. Was any one present when they were first given to you?

A. I think not; they were handed to me in the main building. All the employees of the office were there—that is, I presume they were there. It was during business hours.

26th. Int. Who was present when you delivered them to Mr. Rubey?

A. No one, I think, but himself.

27th. Int. Where did you deliver them?

A. In Malone & Epperson's Bank.

28th. Int. Did you take a receipt from him?
A. Yes, sir; I took up a receipt which he then had.
29th. Int. What was that receipt?
A. I couldn't tell you, sir.
30th. Int. What was the substance of it?
A. I did not read it. I couldn't tell you what it was. I don't know that I could give you the sum and substance of it at all. I did glance at it, but I did not read it.
31st. Int. Do you know by whom it was signed?
A. No, sir; I do not.
32nd. Int. What did you do with it?
A. I gave it to Mr. Larrabee, the secretary.
33rd. Int. How large a package was it?
A. As near as I can remember, it was possibly about the size of a bond done up; about the size of a legal envelope, and three or four inches thick.
34th. Int. Was there any endorsement on the outside of the
240 package to show what it was?
A. I think nothing but Mr. Rubey's name.
35th. Int. Were the bonds in an envelope?
A. They were wrapped up in paper.
36th. Int. By whom was his name endorsed on them?
A. I couldn't say. It is rather my impression it was done by Mr. Larrabee. I don't remember.
37th. Int. When did this occur, with reference to the visit of Mr. Church at Macon?
A. It was after he was here. I don't remember how long.
38th. Int. Was it after he had left here?
A. Yes, sir.
39th. Int. Did you ever see any package at any other time?
A. No, sir.
40th. Int. Do you know of the shipment of any Schuyler County bonds to New York City?
A. I do not.
41st. Int. Did you ever see that package again?
A. No, sir.
42nd. Int. How far was the banking-house of Malone and Epperson from the office of the company?
A. About three blocks.
43rd. Int. How frequently was John F. Williams in and about the office of the company?
A. He was not in there very frequently.
44th. Int. Explain what you mean by that.
A. I hardly know how to answer that question. He might have been there very frequently when I did not notice him at all, but I think it was frequently the case that he was not in there once a week. Sometimes probably he was in there every day.
45th. Int. Mr. Williams is a lawyer?
A. Yes.
46th. Int. How far was his office at that time from the office of the company?
A. Just across the street—angling.
47th. Int. And how far from the court-house?
A. About a block. The insurance office was between his office and the court-house. The last year the company was at Macon, Col. Williams had the front room up stairs in the building the company was in.

48th. Int. Do you know anything of the preparations of the annual statement of the company for January, 1873?

A. I do not.

241 49th. Int. Did you in any measure participate in preparing that statement?

A. I made up the agents' account—a part of it—the amounts due from agents—as bookkeeper.

50th. Int. Beyond that, did you do anything?

A. The amount of cash on hand.

51st. Int. Anything else?

A. No.

52nd. Int. Do you know anything of the distribution of pamphlets or circulars purporting to set forth the condition of the company at that time?

A. No, sir; it is my recollection that pamphlets were mailed and sent out from the office; that was no part of my business, however, at all.

53rd. Int. Did you have anything to do with the preparation of a statement preparatory to the examinations of Church and Selby?

A. No; nothing further than preparing a statement of the amount due from agents, and of cash on hand.

(Signature waived.)

In the district court of the United States for the eastern district of Missouri.

WILLIAM R. WALKER, ASSIGNEE IN BANKRUPTCY of the North Missouri Insurance Co.,
against
SOLOMAN G. KITCHEN ET AL.

Deposition of W. W. WATKINS, taken on behalf of the defendants, before Chas. L. Duesslein, United States commissioner for the northern district of Illinois, at the office of said W. W. Watkins, in the city of Chicago, on Thursday, February third, 1876, as per agreement of counsel.

Present, Holdridge O. Collins, esq., on behalf of the complainant, and E. W. Pattison, of St. Louis, on behalf of the defendants.

Said witness, being first duly sworn, testified as follows:

Examined by Mr. PATTISON:

Q. Mr. Watkins, will you please give your name, age, residence, and occupation?

242 A. My name is W. W. Watkins; residence, Chicago; occupation is dealer in hops, barley, and malt, brewers' supplies; age, forty-one years.

Q. Were you formerly a resident of Macon, in the State of Missouri?

A. Yes, sir.

Q. Up to about what time?

A. I left there in May, seventy-three.

Q. Was the latter part of May or middle of May?

A. About the latter part of May that I left there.

Q. Were you acquainted with any of the stockholders, or officers, or directors of the North Missouri Insurance Company, whose chief office at that time was in Macon?

A. Yes, sir.

Q. Will you state, if you please, who you was acquainted with connected with that company?

A. Colonel John F. Williams was—I guess he was—president of the company; Colonel Forbes was another; Judge Henry another; General F. A. Jones, Albert and William Larrabee, Isaac Hays, and Glaze.

Q. About sometime during the month of May, do you remember of an examination being made of the North Missouri Insurance Company by the commissioners of different States?

A. I was boarding at the hotel there and there were several strangers round there for several days, and it is natural for a man to enquire what his business is; men are of different conditions; I recollect a particular man by the name of—I don't recollect—from Ohio, and some other parties, and I asked what those men were doing there, and they said they were looking after the standing of the North Missouri Insurance Company.

Q. Well, now, about that time, was not application made to you by any of the parties that you have named as being connected with the North Missouri Insurance Company, for the loan of any bonds?

A. There was one, I will say one of three, either Isaac Hays, or F. A. Jones, or Colonel Forbes asked me, found out something, I don't know how they knew it, that I had some special deposits in the bank there; as I was driving along the street one day he asked me for the loan of my bonds for one day, I think it was for one day, he wanted
243 just to take them into another banking-house from where they were; I am not positive whether it was called the Macon Savings Bank or Melone and Epperson's Bank, and then it changed to the Macon Savings Bank; I don't know whether it had changed at that time or not.

Q. Was it the bank with which Melone was connected?

A. The bank of which Melone was cashier.

Q. Wasn't Melone connected at that time with the North Missouri Insurance Company?

A. I have heard he was by rumor, but I am not positive of that.

Q. It was Melone that you heard was connected?

A. With the North Missouri Insurance Company.

Q. Where were your bonds at that time?

A. They were with the banking-house of B. N. Tracy & Sons.

Q. Now, state, if you please, what you did in answer to that request, if anything.

A. I told them that I would tell Mr. Tracy; to inquire of him; I would tell him what to do in regard to letting them have the bonds.

Q. Did you give any direction to Mr. Tracy?

A. I told Mr. Tracy in case Mr. Melone satisfied him that the bonds would be returned at the specified time, he could have them.

Q. Will you state what those bonds were?

A. I think there was three thousand dollars of them in Macon County bonds, and the balance, as I have been studying it over lately, were, I think, bonds called Burlington and Southwestern first mortgage bonds of the Burlington and Southwestern Railroad.

Q. Do you remember the amount?

A. I could not say positive with regard to that; but it kind of runs in my head that when they put these bonds up for collateral security for the loan of money, it runs in my head the loan was sixteen thousand dollars, and they put them up two thousand for one; they doubled them as collateral security; there might have been something like that;

might not be more than twelve or thirteen thousand—whatever you got track of.

Q. Could you say there was as many as twelve or thirteen thousand?

A. Yes, I could safely say there was as many as that.

244 Q. Do you remember the denominations of the Macon County bonds?

A. I do not; bonds are on special deposit yet; the balance of them have been redeemed.

Q. Did this gentleman, whoever he was, state for what purpose he wanted to borrow the bonds for twenty-four hours?

A. I do not think he did, if I remember right; I do not think I asked him any questions in regard to it; I merely answered him; made up my mind I would not let the bonds go without Tracy being responsible for them, and I did not ask any questions.

Q. Were both these bonds, the Burlington and Southwestern and the Macon County, in possession of Tracy & Sons?

A. Yes, sir.

Q. State whether those bonds were ever the property of the North Missouri Insurance Company.

A. No, sir; they never were.

Q. Do you know whether or not they were ever exhibited as the property of the North Missouri Insurance Company?

A. No, sir; I do not.

Q. You don't know of any other bonds having been loaned in that way, do you?

A. No, sir.

Cross-examination by Mr. COLLINS:

X Q. Mr. Watkins, were those bonds yours?

A. Well, in one sense they were, and in one sense they were not; those Macon County bonds were mine, and these others I made a loan of eight thousand dollars to the railroad company and the bonds were collateral security to that loan; the loan was paid and then the bonds went back to the party; they put these bonds up as collateral.

X Q. You loaned money and these bonds were given you as collateral security?

A. As collateral; those railroad bonds.

X Q. To whom did you loan the money?

A. I loaned the money to a banker in Linneus, Missouri; and Fitz Henry Warren, of Burlington, was on the note also, and Benjamin

245 Hays, our cashier of the savings bank, and some others; those were the only three I remember of.

X Q. Those bonds were given to you as collateral security for that loan?

A. For that loan; yes, sir.

X Q. Do you know who were the owners of those bonds?

A. I do not.

X Q. Any further than——

A. Any further than they were brought to me by a man that done their business for them—brought the bonds to me. First place, I thought I loaned these fellows some government bonds, but come to think about it, I disposed of those government bonds and made this loan.

X Q. When these bonds were pledged to you for this loan, was there any assignment written on them?

A. I don't think there was.

X Q. Was there any notice of the transfer of the bonds to you made or given to the company?

A. No, sir; I loaned this party this money for six months; made the notes payable at Tracy's Bank. They paid the interest all in advance to me—eighteen per cent. interest.

X Q. Then the notes were paid then, and the bonds were delivered up?

A. Yes. I left the bonds right in Tracy's Bank. The note lay there, and when the note became due it was paid, and they took their bonds.

X Q. You said a few minutes ago that Mr. Hays, a former mayor of Macon——

A. Yes; that is one of these men I mentioned.

X Q. He was one of the men—you think one of the three men?

A. It was either him or Colonel Forbes or Jones that made the application first to me.

X Q. Now, Mr. Watkins, did the person who made the application to you tell you for what use he wanted them?

A. No; I don't think he did. No; I don't think he said anything about it. There was a lady in the buggy with me at the time, and I guess he was a little jealous about speaking about it.

X Q. You knew these agents of the insurance department in the several States were there at the place—Macon?

A. Yes.

246 X Q. For the purpose of examining into the affairs of this insurance company?

A. Yes, I knew it, as far as rumor went. I do not know whether the men come, sir, positive, without he really says so.

X Q. You heard talk about it; you met these agents?

A. I met them at the hotel. I did not keep the hotel; I was merely boarding there.

X Q. When this application was made to you for the loan of those bonds, although you said they did not tell you what they wanted them for, didn't you know what they did want them for?

A. I surmised that's what he wanted of them. I did not ask the question.

By Mr. PATTISON. Surmised what?

A. That they wanted them for that purpose.

By Mr. PATTISON. What purpose?

A. To make a showing of them—something of that kind.

X Q. In other words, you surmised that the company wished the loan of those bonds to be used by them in their statement to these officers and agents of the insurance department of the different States?

A. Yes; I suppose something like that.

X Q. Did any one before you made this loan, or after you made this loan, tell you that they had been borrowed for that purpose?

A. That I have no recollection that they did; don't have any recollection.

X Q. Was anything said to you before this application was made direct to you for the loan to the effect that you would be asked for the loan of these bonds?

A. Not that I have any recollection of now.

X Q. Did you give the person who applied to you for the loan of these bonds any writing to Mr. Tracy?

A. Nothing at all. No, it was all verbal. I just merely told Tracy that if——

X Q. My question is, did you give these persons who applied to you any writing to Mr. Tracy?

A. Nothing at all.

X Q. Now, did you ever send any instructions to Mr. Tracy
247 in regard to these bonds?

A. No; not to my knowledge. I don't have any recollection of that kind.

X Q. You *see* Mr. Tracy personally?

A. Yes. I think the way it was, I called at Tracy's place—called him to the door.

X Q. What were your instructions?

A. That if Melone satisfied him that he would return the bonds, to let him have them.

X Q. Melone?

A. Yes.

X Q. He was at that time one of the directors and stockholders?

A. I don't know that positive. He was a banker; I loaned them on the strength of that.

X Q. How long did they retain possession of those bonds?

A. I think only the length of time they were to have them.

X Q. Did the bank deliver them back to you or Tracy?

A. By Mr. Tracy for the bank.

X Q. Do you know who returned them?

A. No; I do not.

X Q. Do you to whom Mr. Tracy delivered them?

A. No, sir.

X Q. Did you ever have any conversation with Tracy afterwards in regard to this affair, in which Mr. Tracy stated to whom he gave the bonds, or who brought them back to him?

A. I do not have any recollection of it now. I guess about the only thing that passed between Mr. Tracy and myself on the subject, Tracy said, I guess there is a little smoke over there; I says, wouldn't wonder. I guess that is every word that's ever said between us.

X Q. Did you ever receive any consideration?

A. No, sir.

X Q. Did you, or did Mr. Tracy, as your agent, or anybody else for you, pay any money when these bonds were returned?

A. No, sir; not to my knowledge.

X Q. Do you know of your knowledge in what manner this person or these persons obtained possession of these bonds from Mr. Tracy?

A. No; I do not.

X Q. You don't know whether they gave Mr. Tracy a written receipt for them or not, or a verbal promise that they would be restored?

A. No.

X Q. You don't know anything about that?

A. No.

248 X Q. Or how they got them from Tracy?

A. No.

X Q. Or how they were delivered to him?

A. No.

X Q. Or whether they paid Mr. Tracy any money for them?

A. No.

X Q. Or whether Mr. Tracy delivered them any money when they delivered them back to him?

A. No.

X Q. You know Mr. Tracy didn't pay any money for you for these bonds?

A. No; he didn't pay any money for me.

X Q. Of course, you owned the bonds, and would not have paid them anything?

A. No.

X Q. Then you don't know of your own knowledge, Mr. Watkins, how the company got possession of these bonds?

A. No, sir.

X Q. But, for all you may have known to the contrary, Mr. Tracy may have sold these bonds to the company?

A. For anything that I know, although they did not belong to him. I don't know whether he——

X Q. He had no authority from you to sell them?

A. He had no authority from me.

X Q. And if he did sell them, he sold them on his own responsibility?

A. Yes.

X Q. Still he might have sold them and you not know anything about it?

A. Bare possibility that he might.

X Q. Now, Mr. Watkins, how long after this transaction was it that these bonds were seen by you?

A. Well, I could not say. I think, though, some time in the month of May; think I brought all my special deposits, with the exception of these Iowa bonds. I think I brought all the balance of them what I had there in Tracy's bank; I think I brought them here along. I do not think I ever saw the Burlington & Missouri River Railroad bonds after that.

X Q. When did you say this transaction took place?

A. Fore part of May, I judge it was; that is kind of guess work.

X Q. Same month?

A. Yes.

249 X Q. How long was it after this transaction that the borrowing of these bonds took place, that the railroad bonds were redeemed?

A. They were redeemed, I think, in the month of June; tell by referring to papers.

X Q. When you left Macon, you left the railroad bonds there?

A. Yes; the note was payable there.

X Q. In whose possession?

A. Mr. Tracy's possession, with the bank; the other bonds I brought away, and then afterwards sent them back for collection.

X Q. You say they have been paid?

A. Yes, sir; note has been paid.

X Q. Have you received the principal of the note and interest of the money?

A. Yes.

X Q. And the bonds have been delivered up by your instruction to whom?

A. To whoever paid the note; I don't know who; I guess Mr. Kohns paid the note, a banker of Linneus.

X Q. Do you recollect the names of all the persons who were on that note?

A. No; I gave three names; they are all that I remember of.

X Q. Please give them once more.

A. Fitz Henry Warren, of Burlington, was one; and Mr.—, I don't

know his initials, is another, and this Mr. Melone, of Linneus, was another.

X Q. Were either of these gentlemen stockholders in this insurance company?

A. No; I don't think they had anything to do with it, to my knowledge.

X Q. What position or office did Mr. Hays have in the company?

A. I don't know anything more than that he was one of the stockholders of the company.

X Q. Were you a stockholder in the company?

A. No, sir; I tried hard to be but they never got me.

X Q. Mr. Watkins, will you state, to the best of your recollection, how you knew that these bonds were to be used by the company for the purpose of being exhibited to the superintendents of the insurance departments for the various States?

A. Well, sir, I don't know that I really know anything about it, any more than just what I have naturally surmised myself. I don't
250 know that I ever heard anybody say a word about it. I do not have any recollection now that I did.

X Q. But you did know that these superintendents were there for the purpose of examining——

A. This rumor told me that; naturally talked about; they were there for that purpose, and I had that impression right off; that is what they wanted.

X Q. These gentlemen that asked the loan of these bonds from you were friends of yours?

A. Oh, yes.

X Q. You were on more or less intimate terms of friendship with them?

A. Yes.

X Q. Did you know anything about the standing of the company?

A. Well, that was more surmise than anything else. I never thought they amounted to anything.

X Q. And your surmise of course extended to the length that these bonds were to be exhibited to the superintendents of the insurance departments of the various States as assets of the company?

A. That is what I suppose; yes.

X Q. Do you know whether Mr. Tracy was a director or stockholder in the company?

A. I don't think he was. I don't know positively, but his father—his father was living it that time—I don't know but the old gentleman had some of the stock.

(Signature waived.)

The deposition of John F. Williams, taken before George Brown, a notary public in and for the county of St. Louis, State of Missouri, in the city of St. Louis, Mo., on the 22d and 23rd days of December, A. D. 1875, on the part of the respondents.

JOHN F. WILLIAMS, being about the age of 47, and having been *my*me first cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, was ex-
251 amined, and he did thereupon depose, testify, and say as follows:

Examined by Mr. ALLEN:

1. Int. Where do you reside?

A. Macon City, Missouri.

2. Int. What is your age?

A. 47.

3. Int. How long have you lived at Macon City?

A. Since January, 1865.

4. Int. How long have you been president of the North Missouri Insurance Company?

A. I was president I think two years—about two years.

5. Int. How long have you been a member of its board of directors?

A. Well, about 3 or 4 years, I think; 3 years anyhow.

6. Int. Who was its secretary at the time you became a director first?

A. Mr. Larrabee organized the company & was its secretary from its inception until its close.

7. Int. Who had the management of its affairs & gave exclusive personal attention to them?

A. Mr. Larrabee managed it from its beginning to its end; he was the master spirit of it; he was the only insurance man connected with it that I know anything of.

8. Int. During the time you were director, and during the time you were president of the company, what attention did you give to its affairs?

A. None, sir, as president or director; I attended the directors' meetings merely. The most connection—my business I had with the company was as its attorney; I attended to its law business for it for a good many years; from the time I became a stockholder until it moved to St. Louis I acted as counsel and attorney for the company.

9. Int. State fully your connection with it; during the time you were president, how much time did you devote to its affairs, and what did you know of its affairs.

A. Well, sir, while I was president of the company, when I was at home, I signed all the papers that were required of the president to sign, such as policies, agency contracts, and all things of that
252 sort, stock, and as the business of the company increased it took me some little time, from half an hour to an hour in the morning, to sign up the necessary papers for the company. I signed them of course in blank; I also signed checks on the treasurer for money, & signed them in blank; the secretary would sign up a lot of checks & send them up to me to sign, I would sometimes sign 20, 30, or 40, or 50 in the check-book, and the book would be carried back to him. He would send it up to me to sign it in blank, and it would be sent back to him, and then he would issue his warrants and sign them when he was present, and when he was absent the assistant secretary did it. Part of the time Mr. Langdeau was assistant secretary; a portion of the time Charles H. Steele was assistant secretary. Frequently I was away from home practicing law, and generally before I would leave home the secretary would request me to sign up a considerable number of agency contracts and checks, and sometimes stock certificates in blank, which I did.

10. Int. What portion of the time while you were president of the company were you away from home?

A. Well, sir, I should think probably about one third of the time; I attended courts in a number of the adjoining counties and was away from home a good deal.

11. Int. State whether at any time while you were president of the company you had any general run or knowledge of the affairs of the company in reference to its assets and liabilities?

A. No, sir; I never had any knowledge of the company except as stated to me by the secretary, of its condition; none other.

12. Int. State whether you ever had had, before becoming a director and president of this company, or had while so, any experience or knowledge of insurance affairs.

A. None whatever.

13. Int. And accounts?

A. None whatever.

14. Int. State whether during your connection with that com-
253 pany as its director and president you ever had occasion to and did examine its books.

A. I never examined a book of the company in my life; never have to this day.

15. Int. How long had you been acquainted with Mr. Larrabee, the secretary?

A. I had known Mr. Larrabee since about 1854 or 1855.

16. Int. Where?

A. In Macon City; previous to my removal to Macon City, I lived in Howard County, Missouri, and was circuit attorney of the second judicial district of the State, composed of the counties of Macon, Randolph, Howard, Boone & Callaway, & was in Macon at two terms a year, and I met Mr. Larrabee as a lawyer; he was an attorney, and I became acquainted with him at Bloomington, the county seat of Macon County, about the year 1854 or '5; knew him as an attorney; knew him as mayor of the city; knew him as postmaster at Macon City, and as the leading insurance man of that county, in that section of country; I went into the company about a year and a half after its organization as a stockholder and as attorney for the company.

17. Int. He was the business man of this company, was he?

A. Entirely so; there was no man in the company, in the directory, that pretended to have any knowledge of fire and marine insurance except Mr. Larrabee.

18. Int. What was the reputation of Mr. Larrabee in that community, up to the time of the removal of the company to St. Louis, for intelligence and capacity as an insurance man, & for honesty and truthfulness in his general character?

A. Well, sir, it was first-class; he was regarded as the best insurance man in our country, and as a man of integrity and honor; he was a member of the Christian Church there, in good standing, and his integrity and capacity was never questioned by any of us.

19. Int. Please state, Colonel, the circumstances under which you signed and made oath to the January statement, 1873, of the North Missouri Insurance Company to the insurance department of the State of Missouri.

254 A. Well, the January statement of 1873 was made up in the office, I suppose, by Col. Curtis and others. Col. Curtis came into my office with a statement made up for January, 1873, for the insurance company, signed by Mr. Larrabee, and told me he wanted my signature; I asked him if it was all right; he said it was so far as he knew, that he had made it up from data that had been given him by officers of the company; it was signed by Mr. Larrabee; and he laid the statement upon my desk at which I was at work at the time, and I signed the statement; he took it and carried it out; he was not in my room two minutes; I never examined the statement then, and never have examined it to this day; never saw it before or since.

20. Int. Do you recollect who administered the oath to you?

A. I don't think anybody did; Col. Curtis was a notary public; I signed the oath and it was just the same as swearing to it, though I don't think there was any swearing at all; I signed the oath in his presence; he was an officer.

21. Int. A notary?

A. A notary, I think it was; that is my impression.

22. Int. You say you never have examined the paper?

A. I never have seen it to this day.

23. Int. Then you are unable to state whether in that statement which you signed at that time were included in the assets of the company the different bonds and notes sued for in this bill?

A. I don't know of my own knowledge; I have been told Schuyler County bonds and some Omaha, Macon County, bonds were in that statement that are sued for in this suit; I suppose that is the fact.

24. Int. I will ask you whether from any personal information you then had of the affairs of the North Missouri Insurance Company or that you have had of its affairs if you had read that statement at the time,
255 and seen those bonds enumerated in that as the assets of the company, would you have been able to have stated whether they were assets of the company on any other information than the statement of Mr. Larrabee?

A. The only information I could have gotten would have been from an examination or questioning of Mr. Larrabee in regard to the assets of the company; I could not have gone through the books of the company myself in months, because I had no experience or knowledge of the kind that would enable me to make an examination of the company if I desired to do, and in my signature to that, and to all other papers there, I relied entirely on the integrity of the secretary; I never suspicioned—never heard—or never suspicioned there was anything wrong in that January statement until after the visit of Mr. Church and Mr. Selby, in May, 1873.

25. Int. You may state what facts came to your knowledge at that time which occasioned any suspicion on your part that the January statement was incorrect.

A. After the visit of Mr. Church there, I ascertained that there had been bonds exhibited to Mr. Church, & probably to Mr. Selby, that were not owned by the company, and then I inquired why it was that if the company's assets were all exhibited, and these additional bonds, why was it that the company showed an impairment, because when Mr. Church first came to Macon I went into the office the morning after he got there, and was introduced to him by Mr. Steele, in the lower room of the main office; I went up stairs and sent for Mr. Larrabee, and had a consultation with him in reference to the condition of the company whether it was in a condition to stand an examination such as Mr. Church would make, knowing Mr. Church by reputation to be rather severe upon insurance companies; Mr. Larrabee sent for Mr. Munson, who was the oldest clerk, the chief clerk, I believe, in the company, a man who had been connected with it as clerk since its organization, and I
256 think Mr. Langdeau, who had been in it nearly all the time, and been assistant secretary, and asked them how much impairment an examination would show, and they replied from 3 to 5 per cent. Well, I knew that the law permitted an impairment of 20 per cent., and I remarked to Mr. Larrabee if an examination of the company would only show an impairment of from 3 to 5 per cent., an examination by Mr. Church would be very advantageous to the company, and we ought to have him make it by all means, because his reputation as an insurance

man would do the company more good, giving a favorable report of its standing, than any other insurance man in America, and that we either had to be examined by him at that time or go out of Ohio, that that was the law; well, they all said there, Mr. Larrabee, Mr. Munson, & Mr. Langdeau, that it would not show an impairment of more than 3 to 5 per cent., so the examination was made; after it was made we went and talked the matter over; I repeated what they had said to me, and then told them, "Now," says I, "in addition to the assets of the company here, you have exhibited other bonds that don't belong to the company, and now it seems we show an impairment of over $200,000; it ought not to be, according to your statement, more than some $20,000;" I asked them how it was, they were insurance men, & I would like for them to explain it; and then they went on to explain that Mr. Church didn't give the proper value to the bonds, and give the proper value to this asset, & that asset, & the other asset, & that this way he reached the conclusion he did.

26. Int. Then when was it you first, as you have started to say, ascertained that bonds or securities that did not belong to the company had been included in the January statement?

A. After Mr. Church left, in talking this matter over some time after, I don't know how long, Mr. Larrabee said that those bonds, or
257 some of them, were in the January statement, and I asked him upon what grounds he could put bonds in the statement that didn't belong to the company, and he replied that under the insurance law of the State he could not make any exhibit of second mortgages on real estate, and that he borrowed these bonds to supply the deficiency in that statement by reason of the law prohibiting the exhibiting of second mortgages; that was the explanation.

27. Int. I understand you to state that your first knowledge that the January statement included any statement of assets that were not the property of the company came to you subsequent to the visit of Mr. Church?

A. After the visit of Mr. Church & Mr. Selby.

28. Int. Both?

A. Yes; I stated that Mr. Church came there & commenced an examination; while he was making the examination Mr. Selby and Mr. Mitchel came up and knocked round—did some little work—a day or two, and went away, & came back before Mr. Church left—came back before Mr. Church & Mr. Whitney, a gentleman who was with Mr. Church, left.

29. Int. Were you present at the taking of the deposition of Bright G. Barrows and Byron Griffiths, in Macon, last month?

A. Yes, sir.

30. Int. You heard the testimony of those gentlemen with reference to your signature to a paper bearing date May 21st, 1873, as follows: "The undersigned hereby agrees and guarantees that the North Missouri Insurance Company shall, within 10 days from this date, return to Byron Griffiths all the bonds this day borrowed from said Griffiths by said company"?

A. Yes, sir.

31. Int. Signed "F. A. Jones, William Forbes, Jno. F. Williams, B. G. Barrow." Please state all you recollect in reference to that paper?

A. Well, sir, I don't recollect anything in the world about it. I have no recollection of ever hearing or seeing such a paper as that, until the fall of 1873.

258 32. Int. State when it was first brought to your attention that you now recollect, and all about it.

A. The first I ever knew of it, a gentleman—Mr. Isaac Hays—came to me on the street one day and told me that Mr. Griffith had a guarantee for the return of some bonds that the insurance company had got from him and kept, and that I was on the guarantee. I immediately hunted Mr. Griffiths up and asked him if he had such a paper, and he told me he had, and took it out of his pocket and showed it me. I knew that the company had brought some of Mr. Griffith's bonds to St. Louis, at least I had heard so, and that they had hypothecated them with the Bank of North America, but I never knew until the time I speak of that I had given any guarantee to Mr. Griffith in reference to these bonds, and I have been trying ever since to remember about that paper. I might go on and state what a gentleman told me—in whose veracity you have perfect confidence——

33. Int. I think you had better do it. If Mr. Meyers chooses to object, he can do so.

(Mr. Myers objected.)

A. I will state this: on inquiry, Mr. Albert Blair, of Macon City, tells me that that paper was handed to him down in town, either by Mr. Larrabee or Col. Forbes, with the request that he get the signature of B. G. Barrow and my own to it; that he brought the paper up to Mr. Barrow's office, found him in his office, got his signature, and came on up to the court-house; and that when he came to the court-house he found that I was engaged; the parties down town were waiting for the paper, & he got pen & ink, and when I had the first moment leisure he pulled me round and asked me to sign that paper, & I signed it. He took it and delivered it back to Col. Forbes or Mr. Larrabee, whichever one he got it from. I have no memory about it at all, but I have full faith and confidence in the statement of Mr. Blair; he is a man
259 of undoubted veracity & truth. The statement that Mr. Barrow makes about it in his evidence is not true, because if I had signed the paper after consultation with him and Jones & others, I would not have forgotten it, because I am not a forgetful man.

34. Int. State whether prior to the visit of Mr. Church, or at the time before he left Macon City, you ever had any conversation with Mr. Larrabee, or with either of the parties whose names with yours are signed to that paper, with reference to borrowing bonds from Mr. Griffiths.

A. Not a word that I have any recollection of. I had no personal acquaintance with Mr. Griffith, and didn't know that he owned a bond in the world—I didn't know that Mr. Watkins owned a bond in the world.

35. Int. What do you recollect with reference to those Moberly notes of $27,000.00 and $13,500.00?

A. I recollect at one time that a proposal was made to the board by Mr. Larrabee on behalf of Col. Moberly, to take stock in the North Missouri Insurance Company to the amount, I suppose, of those notes, about $27,000, and pay for it in some property at Chillicothe that he had got from Gen. Hammond. The proposition was made to the board and discussed, and was rejected; I never heard that there had been any note given, or note, deed of trust, or anything of the sort, & I never heard of the proposition afterwards until suit was brought, or of any note.

36. Int. When did you first know, with reference to Mr. Church's visit to Macon City, that any of the securities for which suit is brought in

this case against you and you' co-defendants were exhibited to Mr. Church as assets of the North Missouri Insurance Company?

A. Well, sir, I don't know personally that anything ever was exhibited to Mr. Church. I understand from Mr. Larrabee that he exhibited to him the assets of the company; but in talking over the matter after Mr. Church left, it appeared he had also exhibited to him some bonds
260 that didn't belong to the company—from the talk; I never saw one of the bonds in my life.

37. Int. How long was that after Mr. Church left you first learned that from Mr. Larrabee?

A. I think it was after Mr. Church had left, and it was after Mr. Larrabee had been to see Mr. Church & returned.

38. Int. He had been to Ohio?

A. Been to Ohio trying to make an arrangement with him.

39. Int. Was it before the property of the company was brought down here & the office moved here?

A. I ascertained that before the company moved down here. The company didn't move to St. Louis till about the 20th of June. Mr. Larrabee, my recollection is, got back from Ohio about—when he went to see Mr. Church—got back, I think, about the 3d or 4th of June.

40. Int. Do you know of your knowledge what assets of the company were brought to St. Louis by Mr. Larrabee, or by any other party connected with the company?

A. I do not, sir; I never held an asset of the company in my life, nor saw an exhibit of them; never examined a bond belonging to the company.

41. Int. Were you present at the examination of the securities of the company in St. Louis by the commissioner for the State of Missouri?

A. No, sir.

42. Int. After the assets of the company were brought down here?

A. No, sir; I never saw Mr. Stadden in my life—I don't know him; I wasn't in St. Louis from the time the company moved down here until, I believe, at the St. Louis fair, in October following; I wasn't in St. Louis from about the 10th or 11th of June until October, 1873, during the fair.

43. Int. I will ask you to state whether you appropriated to your own use any of the bonds & securities—bonds & notes named in the bill—or any other of the assets of the North Missouri Insurance Company?

261 A. I never saw one of the bonds or notes named in the bill in my life; never appropriated them to my own use or to anybody else's use, or at least to any of my friends' use.

44. Int. I will ask you to state whether you prevailed upon and procured Mr. Melone, treasurer of the company, you or any of your codefendants, to unite and co-operate with you in parcelling out and distributing the notes and bonds named in the petition among yourselves & your friends?

A. I never did; never knew of any such thing or heard of any such thing until I read that petition. I state in reference to the letter written to John H. Overall, that is attached to the deposition of Albert Larrabee, and written by me, in which I urged Mr. Overall that whatever they do down here to do it quickly; that is about the substance of it. I state this, that after the examination of Mr. Church and the report got out that the company was not sound, that the effect was very disastrous upon the business of the company, and it was losing ground every day, and my advice to all parties in the company was either to make

the impairment good at once or have a receiver appointed and wind the company up; and writing to Mr. Overall to do whatever they did quickly, meant that they must do it quickly or the company would be ruined from the examination and the newspaper publications that was made in regard to its solvency and standing. An insurance company is like a woman—to doubt it is to ruin it.

45. Int. I will ask you to state whether there ever was brought to your attention, prior to your ceasing to be president of the company, any printed schedule or statement, whether in newspaper form or in the shape of circulars, including among the assets of the company the securities, bonds, and notes named in this bill?

A. I don't remember ever seeing any statement of the company except the little, short statement giving the general assets of the company and the general standing; I never examined a detailed statement of the condition of the company in my life.

262 Mr. ALLEN. I believe that is all.

DEPONENT. Now, I state in reference to Mr. Church's visit there, he never made any report to the directors—officers of the company—of the result of his examination at all, and that this paper that I saw there which purported to be made by him was a summing up in the hands of Mr. Larrabee, showing the general result to be an impairment of over $200,000; and that Mr. Selby's report was made to the president & board of directors, written on the 10th day of June and received on the 11th or 12th of June, 1873, showing an impairment of over $200,000, and the statement that the company must make the impairment good within 60 days or he would take proceedings against them according to law. In reference to the visit of John Baker and Moses Baker and Mr. Drake to Macon City, I will state I never knew that these parties were there or heard of it until after they left, except I heard Mr. Drake was in town; but I never knew that John Baker was there, or Moses Baker, until I heard Mr. Barrow testify in this case; and I never knew or heard, until that time in his testimony, that either one of the Bakers or Drake were ever paid anything for a loan of the Schuyler County bonds to Mr. Larrabee. I state that in the fall of 1872 stock certificates were signed in blank by myself and given to Mr. Barrow, who was appointed agent to go out & make collections from parties who owed stock notes to the company, take up the old certificates which they had and give new certificates for the amount that they had paid up and cancel the balance, or get payment of the whole; and in order to accomplish that purpose he had to have with him stock certificates already signed up in blank, and that they continually had certificates in the office in the possession of the secretary that were signed in blank by myself, as well as checks on the treasurer of the company for moneys.

263 Cross-examination of John F. Williams by Mr. MYERS:

1. X Int. In your direct testimony you stated that after Mr. Church's visit you learned that bonds had been borrowed, and that borrowed bonds had been set out in the January, 1873, statement to the insurance commissioner, and you asked Mr. Larrabee why that was, & he gave you an explanation of the matter.

A. Yes, sir.

2. X Int. What did you do when you got that explanation towards contradicting the statement?

A. I didn't do anything, but I told Mr. Larrabee and all parties that we would either have to go to work and make up our impairment by re-

duction of stock and additional assets, or we would have to go into the hands of a receiver.

3. X Int. Did you do anything towards contradicting the statement?

A. No, sir.

4. X Int. Do you know or have you heard whether a guarantee was given to Mr. Watkins in respect to his bonds, or to any one for him, similar to what was given in the case of Byron Griffiths?

A. Never heard that there was; don't know that any was; never heard that any was; I have never heard or known of any guarantee being given to any person except Mr. Griffiths.

5. X Int. Do you remember a resolution of the board instructing the attorneys of the company to bring a suit against Mr. Moberly?

A. Yes, sir; I remember of such action.

6. X Int. Wasn't that in respect to a matter growing out of the subscription as to which you were interrogated in your direct examination?

A. In my direct examination here?

7. X Int. Yes, sir.

A. Oh, no, sir; I think that was in reference to some stock that had been taken by Mr. Moberly, and which Maries County lands had been given by him to pay the stock. It was afterwards ascertained by the company that the title was bad and the land of no value—not much.

264 8. X Int. Do you remember being examined by William R. Walker, assignee, in Macon City, before Commissioner McGindley, in respect to the general matters of the bankruptcy of the company?

A. Yes, sir; I do.

9. X Int. I hand you your examination and ask you if it is signed by you?

A. Yes, sir; I was examined, & I signed it; that is my signature.

10. X Int. Did you read it before you signed it, or was it read to you?

A. I either read it, or Mr. Walker read it over to me, one or the other.

11. X Int. I read from it as follows: "I heard it rumored while Church was here that bonds were being borrowed by officers of the company; I paid no regard to the rumor, nor did I take any steps in the matter." Will you explain that statement?

A. Well, I think about the time Mr. Church left there I did hear it rumored that some of them were borrowing some bonds, &, I think—well, I don't know who the parties were that told me, I can't say—I cannot say whether it was parties engaged in it, or whether somebody else; I heard it rumored; that was about the time Mr. Church left there.

12. X Int. Was it before or after he left?

A. Well, I could not say to save my life whether it was a day before he left or a day after. It was just about the time of his leaving.

13. X Int. Was your recollection, at the time of your examination before Mr. McGindly, as fresh on that subject as it is now?

A. Well, sir, I hadn't thought about the matter one-tenth as much then as I have since; I have thought about the matter a great deal more since suit has been brought than I ever thought of it before; I gave it more attention, tried to refresh my memory on a great many points I hadn't thought much about before.

Mr. MYERS. That is all I wish to ask, Col. Williams.

DEPONENT. I wish to state in reference to these orders that at the
265 time with Mr. Melone about it, I told him distinctly that I had

no remembrance whatever of the Griffiths guarantee, but that I remembered distinctly signing an order for B. G. Barrow to get $75,000 of Schuyler County bonds that were deposited there at the bank; that after showing me the Watkins order I told him then that I remembered that after Mr. Church left there that Mr. Watkins told me that he had loaned Mr. Larrabee some bonds; I don't know how many, $13,000 or $14,000, & that he had got them back, and that he supposed that old man Church handled the company pretty roughly; and some time after that Mr. Melone came to me with an order to return Mr. Watkins' bonds, & I signed it.

14. X Int. Do you know whether that order was antedated?

A. I don't remember the date of it now, but I recollect at the time I never signed any such other order in my life as that, that Mr. Larrabee's name wasn't to it, and I remember now that Mr. Melone told me that Mr. Watkins had his bonds; that Mr. Larrabee had borrowed them from him; he directed him to return them & he had returned them, & I signed it & told Mr. Melone if the bonds belonged to Mr. Watkins he ought to have them, and if the company had anybody else's bonds it had no business with them & the parties ought to have them.

Redirect examination by Mr. ALLEN, counsel for the respondents:

(The deposition of deponent spoken of in the cross-examination was read.)

46. Int. Please state any correction that you now have to make in the statement made by you in your examination on the 17th of November, 1874, at Macon City, before Austin N. McGindley, U. S. commissioner, in reference to the affairs of the North Missouri Insurance Company, and which I have just read to you?

A. Well, that statement as far as it goes, I think now is cor-
266 rect. In reference to the statement there about bonds, I state now as I stated then, that I never signed any guarantee for the return of any bonds to any party of which I have any recollection, either of the Griffith bonds or any other bonds; and as I stated then, I must have signed the guarantee for the return of the Griffiths bonds when I was engaged in other business, and didn't think about the matter in hand at all. After the examination was over, after Mr. Church & Mr. Selby had left, I found out that Mr. Larrabee had exhibited—or after I heard that Mr. Larrabee had exhibited those $75,000 Schuyler County bonds and Watkins bonds to Mr. Church & Mr. Selby, I then stated that the bonds ought to be returned to the owners, & I signed an order that they should be returned to the owners—that is, the Schuyler County bonds.

47. Int. Have you any correction to make in reference to the date of your purchase of stock?

A. I purchased that stock, my recollection is, it was in January, 1873. It was the last of December, 1872, or the first of January, 1873. I purchased the stock, & I supposed this company was in good condition, & went security for the company on an appeal bond in a suit of Albert Richardson against the company, against the North Missouri Insurance Company, in the Livingston circuit court—bond of $2,000—the last of January, 1873, in connection with J. B. Melone and John M. Loudon, and we have had the pleasure of paying the amount of the debt, nearly $1,200.

(Signature waived.)

The deposition of Frank S. Curtis, taken before George Brown, a notary public in and for the county of St. Louis, State of Missouri, in the city of St. Louis, on the 23rd day of December, A. D. 1875, on the part of the respondents.

FRANK S. CURTIS, being about the age of 44 years, and having been by me first cautioned & sworn to tell the truth, the whole truth and nothing but the truth, in the matter of controversy aforesaid, was
267 examined, and he did thereupon depose, testify, & say as follows:

Examined by Mr. ALLEN:

1. Int. What is your name?

A. Frank S. Curtis.

2. Int. What is your age, present residence, & occupation?

A. Age, 44; I live in St. Louis & am assistant attorney of the St. Louis, Kansas City and Northern Railway.

3. Int. You are a practicing attorney here in this city?

A. Yes, sir.

4. Int. How were you employed in the fall & winter of 1872–'3?

A. I was in the employ of the North Missouri Insurance Company.

5. Int. In what capacity & where?

A. In the capacity of a clerk at Macon City, I think, Missouri.

6. Int. What were your special duties as clerk of that company?

A. Well, I was a general hand at that time. I hadn't anything very particular assigned to me except making up reports, statements, & such as that.

7. Int. Do you recollect having anything to do with the annual statement of the North Missouri Insurance Company to the insurance department of the State of Missouri, made up some time in the month of January, 1873?

A. I think I do. I feel pretty certain I do.

8. Int. State your recollection as to the time, place, & circumstances under which that statement was signed by the president of the company, Col. Williams?

A. Well, the data for the report was furnished by various clerks, including the secretary, Mr. Larrabee, and his assistant Mr. Langdeau, and they were carried then on to this annual report, and the report written out in my hand; then after the report was completed it was submitted to the secretary to examine; when he had examined the report and pronounced it correct, then as notary—I was notary there at that time—I would have him swear to the report; then I would take the report to the president for his signature & for him to swear to it, in the capacity of notary, which I did. Then when I had these signatures sworn to I would return it to the secretary. This would apply
268 to all States and all reports. We made reports for separate States.

9. Int. Please state in reference to the report to the State of Missouri, signed before you as notary public, according to your certificate, some time in January; I think the 28th of January, 1873?

A. Along in the last part of January.

10. Int. What is your recollection as to where that was signed by Col. Williams? State fully as to whether, when he signed it, he examined it, or compared it with any dates in his possession with a view to ascertaining its correctness?

A. Well, sir, Mr. Williams, Col. John F. Williams, was president at that time; he did not, I am certain, examine any data or furnish any

data, or have anything to do with getting up the data in making the report. It was all done as I have before stated, & then when the report was made, I would take it to him in the front room of the second floor where his office was.

11. Int. What office?

A. He had an office in the front room of the building where the insurance company had their office, on the second floor. I would take the report from the office where the secretary and we were working upon it into the first room where he was & hand it to him for his signature; he had no books or any data, and did not at the signing compare it or make any list, or ask any questions about it, any further than he would ask if it was correct. I replied that I believed it was; that I had been over the data as furnished me and reduced it, and the secretary had signed it as correct, and that he was the man who knew all about it. Col. Williams did not examine nor compare anything in any report I ever asked him to sign, or that he signed before me as notary.

12. Int. With reference to this, or with reference to any or all of these, can you state whether Albert Larrabee had first signed the paper—the report and oath—before you took the paper to Col. Williams for his signature?

269 A. The secretary had always signed and sworn to it first. I never took one to Col. Williams until after that.

13. Int. State if you remember whether, when these papers were carried to him for his signature, Col. Williams ever examined the paper itself to see what assets were represented in it as being the assets of the company—what the contents of the paper were?

A. No, sir; he did not—not anything that I ever took to him. There were some of the reports that I took to him in the front room, and some of them I would catch him passing through in the back room where I was working at my desk. Only through the door I would say, "Here, Col, these reports are ready; you can sign them." And he would stop and sign them right on my desk, and pass on; occupy no longer time than to sign and swear to them before me as notary. He never examined one.

14. Int. Can you state whether all the reports that were made at or about that time were verified before you as notary?

A. I think they were; I don't know of any other notary that did any of it. If there were any, I never had any knowledge of it. I feel certain they all were.

Cross-examined by Mr. MYERS, counsel for the complainant:

1. X Int. How many reports were signed and sworn to by defendant Williams during the month of January, 1873?

A. Well, sir, I think all the reports—the annual reports made to the various States in which the company was then doing business.

2. X Int. In how many States was the company doing business?

A. I couldn't tell without counting up.

3. X Int. Approximate it.

A. It was nearly all the States in the Union, except the eastern department; that was separate, by itself.

4. X Int. Were these reports copies of each other?

A. No, sir; not exactly. One State would require items to be divided in order to answer a question; one State would require items to be

270 bulked together; and in another report there were separate questions, and we had to make them separate. Otherwise they were in the main the same; the same data was used.

5. X Int. Was there any item of assets represented in one of these statements that was not represented in all?

A. None that I think of now. I think it was to cover the whole business, and I think they did cover the whole business, as far as the showing there.

6. X Int. What was done with these reports?

A. After, they were sent out to the various States—to the secretary of the States.

7. X Int. Was any abstract of them made for circulation in condensed form?

A. Condensed?

8. X Int. Yes, sir.

A. I am inclined to think there was a little slip, about that long. (Indicating.) It seems to me there was. That was two or three years ago.

9. X Int. Eight or ten inches in length?

A. Yes, sir; and I have not reflected any.

10. X Int. What did these abstracts show?

A. Well, it was just a condensation of the general report, reducing it in form and bulking several of the items into one item. I don't know that I could name the items. I think I should recognize the report if I should see it.

11. X Int. Where any of the classes of bonds mentioned in the condensed statement?

A. I don't know certainly that they were. The word "bonds" was used, but I think it was bulked.

12. X Int. What is your impression as to whether mention was made of the particular sort of bonds in any sort of condensed statement that was prepared?

A. Well, sir, I am not certain. It seems to me that they were mentioned as bonds, but not any special name given to them. I am not so certain about that. That is my best recollection now.

13. X Int. Was there but one form of condensed statement prepared?

A. Only one that I ever knew anything about. I hadn't anything to do with making up the condensed statement, whatever.

14. X Int. What was that condensed statement prepared for?

271 A. Just for distribution, showing the condition of the company.

15. X Int. Distribution where and to whom?

A. Everywhere.

16. X Int. Were they printed in large numbers?

A. I don't know as to the number. They were printed, and they used to be circulated—sent out to agents, enclosed, I took it, as an advertising card.

17. X Int. Any names signed to it?

A. Oh, yes.

18. X Int. What names?

A. My impression is, the secretary's name; it might have been the president's, too.

19. X Int. Do you know of any bonds being kept at the bank at Macon with which Mr. Melone was connected?

A. None, only from what I have heard the boys talking of on the street and in the office; only by hearsay.

20. X Int. You never took any there?

Q. No, sir; never had anything to do with it. Never knew anything about it until long afterwards.

21. X Int. Did you ever have any of the bonds of the company in your possession?

A. No, sir.

22. X Int. For any length of time?

A. No, sir; the data for these reports was handed to me. I didn't examine them.

23. X Int. You were in Macon at the time of Mr. Church's visit to Macon?

A. Yes, sir.

24. X Int. Do you remember efforts made then to borrow particular bonds from different people to exhibit to Mr. Church?

A. I knew nothing of that at the time; didn't know that there was any borrowed at that time.

25. X Int. Did you know or did you not from consultation with the directors and parties in interest?

A. I never talked with directors about it. I know nothing, only what I learned long afterwards in rumor—that some such thing was done.

26. X Int. You learned it from whom?

A. I could not tell. I just barely recollect I heard the report.

27. X Int. You could not name any person who spoke to you about it?

A. No, sir.

28. X Int. Do you remember when the company moved to St. Louis?

A. Yes; it came down in June.

272 29. X Int. Were you in Macon then?

A. Yes; I then came down here with it; the 25th of June, 1873.

30. X Int. Did you bring any assets with you?

A. No, sir.

31. X Int. Do you remember Mr. Langdeau bringing some assets?

A. No, sir; I know nothing of the shipment of the property of the company; what it consisted of I don't know.

32. X Int. What property do you refer to?

A. Desks, papers, and furniture; that is the property I refer to.

(Signature waived.)

The deposition of William E. Moberly, taken before George Brown, a notary public in and for the county of St. Louis, State of Missouri, in the city of St. Louis, on the 23d day of December, A. D. 1875, on the part of respondents.

WILLIAM E. MOBERLY, being about the age of 53 years, and having been by me first cautioned and sworn to tell the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, was examined, and he did thereupon depose, testify, and say as follows:

Examined by Mr. ALLEN:

1. Int. Give your age, residence, & occupation.

A. My residence is Alton, Illinois, at present; age, as well as I can recollect, 53; occupation, lawyer—used to be; it is all I have got. There are so many other occupations I would not like to mention them.

2. Int. Where is your place of business?

A. My place of business is in Alton now, sir. I have an office here, but I have not attended to it lately.

3. Int. Where were you living in the fall of 1872 and the early part of 1873?

A. St. Louis.

4. Int. State fully what you know about any officer of the North Missouri Insurance Company, during the fall of 1872 or early part of 1873, or any time in that interval, having in his possession two notes
273 signed by yourself, one for $27,000, with an endorsement upon it of $13,500.

A. Well, sir, about the latter part of December, 1872—I could not mention the date, it was some time in the latter part of the month—Mr. Larrabee, the secretary, and myself made what we termed a trade, for which I was to execute a note, secured by a deed of trust on some property I had near Chillicothe, in Livingston County. I was to execute my note for $27,000, giving a deed of trust upon this property, with the understanding I was to have $30,000 of the stock of the company, and was afterwards to replace this note of mine in other property—that is, there was a conditional trade, conditioned that the board of directors should ratify it. I executed the note and deed of trust, and delivered them to Mr. Larrabee to be placed before the board of directors, at Macon, for confirmation. Afterwards Mr. Larrabee stated to me that he could get it through better—or I am not positive whether he said he had failed to get it through in that shape—but he could do it better if I would divide the note, taking a credit of $13,500 upon the $27,000 note, and giving a new note, a second note for $13,500, to be security for the $30,000 stock to be issued to me, provided the board of directors confirmed the trade. After that he reported to me that the board had rejected it, and returned me the notes and deed of trust.

5. Int. When did he return your notes & deed of trust?

A. Some time in 1873. I am not positive as to the time, but it was in 1873; he returned them to me after the company moved here. I think in July; but I am not positive about that. I could not say certainly.

6. Int. You say you think in July?

A. I think so. I am not positive as to dates.

7. Int. Are you positive it was after the company moved to St. Louis?

A. Yes, sir; I know that.

8. Int. I didn't understand, perhaps you stated & I may not have heard it, that you did take a credit upon the $27,000 note of
274 $13,500, and did give him an additional note of $13,500?

A. Yes, sir; I did.

9. Int. Please state whether the note you have now referred to, $27,000 and $13,500, were the only notes of those denominations of yours that were ever in the possession of Mr. Larrabee?

A. They were the only notes of that amount that were given. I executed other notes to the company, but not to that amount.

Cross-examined by Mr. MYERS, counsel for the complainant:

1. X Int. Were you present at any board meeting at which your proposition was under discussion?

A. I am inclined to think that I was sick at home at the time that this thing was discussed. I am not positive about it. I could not tell without reference to the minutes; my recollection is I was sick at home at the time that discussion you refer to about the return of the notes, & so forth, took place. I think I was. I am positive. There was a time when I was sick.

2. X Int. Was that deed of trust ever recorded?

A. Yes, sir; Mr. Larrabee, or some person in the interest of the company, had it recorded before it was returned to me.

3. X Int. Before whom was it acknowledged?

A. Well, sir, I could not say; but I think it was McMillan.

4. X Int. Or McGindley?

A. McMillan. McMillan and myself had been in partnership a good deal. I am inclined to think McMillan was in business with a man named Edwards.

5. X Int. That was to secure the $27,000 note?

A. Yes, sir.

6. X Int. Did your wife join in the deed?

A. Yes, sir; I am not positive. I think so.

7. X Int. To whose order was the note payable?

A. Well, as I now recollect, it was payable to the order of the North Missouri Insurance Company.

8. X Int. How long after its date?

A. I think three years; that is my recollection now.

9. X Int. It was sometime in December, 1872?

A. I think, as well as I can call to mind now, it was the latter part of December. I don't know what time; it was just a short
275 time before the close of the month.

10. X Int. Will you please give a full explanation why it was you didn't satisfy yourself and rest contented with simply making the proposition to Mr. Larrabee to be submitted to the board, and why it was you went through the formality of executing a note and a deed of trust and delivering them to him?

A. Well, I can very readily state that, Mr. Myers. I had every confidence in the world in the integrity of Mr. Larrabee and the company, and was anxious to get the stock. I had a good deal of stock and wanted more, and was anxious to get the trade through, and felt perfectly willing to trust the matter to Mr. Larrabee & the company.

11. X Int. How much stock did you then have?

A. I could not tell.

12. X Int. About?

A. I suppose about that time I had about sixty or seventy thousand dollars.

13. X Int. Had you ever been before that time a director or officer of the company?

A. I had.

14. X Int. What had you been?

A. I had been a director.

15. X Int. Up to what time?

A. One year. I don't remember when that year was. I was not then; it was probably two years before that.

16. X Int. You knew pretty well that the annual statement had to be made?

A. I knew they had to be made, and were made.

17. X Int. Will you be good enough to tell me what connection the execution and delivery of the note and deed of trust and acknowledgment had to do with the annual statement of January, 1873?

A. It was, as I understood it, that it would be a very strong incentive to the company to close the trade with me and make it. It was a strong argument by getting it before the annual statement came out. I thought it would influence the company very largely in favor of it, therefore I executed it.

18. X Int. Didn't you understand that it was to be used in that annual statement?

A. Not unless the trade was confirmed, ratified by the board.
276 It was a trade made by the secretary and was subject to the board

of directors; and if the board of directors ratified it, it was final upon me. I had made the contract so that if the board adopted it that I could not get out of it.

19. X Int. Did you get a receipt for your note?

A. Yes, sir; I think I had just simply this, a memorandum made by Mr. Larrabee stating the facts.

20. X Int. Stating what?

A. Well, that this was a conditional trade, subject to the approval of the board, and if not approved by the board, the notes were to be returned to me.

21. X Int. Why did you not get your note and deed of trust back long before you did?

A. I reckon the best reason of that was Mr. Larrabee still informed me from time to time that he would still get the thing through. He said there was no doubt he would ultimately succeed.

22. X Int. In May, 1873, the company was under examination; was that the time when you got them back?

A. I got it back as soon after that as I could; some time in July. I was elected a director on the 23rd or 21st of June, when I found that the company was no longer able to comply with the contract & carry it out. I then got my notes back as quickly as I could. I got them some time in July, I reckon.

23. X Int. In July?

A. I think so. I am not positive about that.

24. X Int. Were you a director of the company at the time you got the notes back?

A. Yes, sir.

25. X Int. You got both notes back at the same time?

A. Both notes and the deed of trust.

26. X Int. Who released the deed of trust?

A. Well, sir, that is more than I can tell you. I made a trade with the Mound City Insurance Company at the time, or about the time the notes were returned, for these same notes, taking a lot of stock from the Mound City. Whether the Mound City released them—handed them to me to save expenses—or whether the North Missouri Insurance Company released them, I am not positive.

277 27. X Int. Who was president when the notes and deed of trust were surrendered to you?

A. I could not tell.

28. X Int. Who handed them to you?

A. That is another thing I cannot tell. It is rather my impression that Col. Britton handed them to me.

29. X Int. When?

A. I don't know whether it was in our office—the office of the company—or in the Mound City; I could not say.

30. X Int. Who gave them to him?

A. I suppose the secretary; I think so.

31. X Int. When they were delivered was any other property delivered to you at the same time?

A. No, not that I recollect of.

32. X Int. Or about that time?

A. It was; after that there was the other property, nothing at that time. There were notes delivered to me after that.

33. X Int. How long after?

A. Probably 15 or 20, maybe 30 days. I could not say.

34. X Int. Delivered by whom?

A. By the secretary of the company.

35. X Int. Mr. Larrabee?

A. Yes, sir.

36. X Int. In whose presence?

A. I don't know. I don't remember, for my life, now whether it was in the office of the company or not. I think it likely it was.

37. X Int. What was delivered then?

A. Two notes of $10,000 each.

38. X Int. Made by you?

A. Yes, sir.

39. X Int. Anything else?

A. Not that I recollect of; if anything else I don't recollect. It was my share in the notes I had put in, less credits.

40. X Int. When did Mr. Larrabee suggest the dividing of the notes?

A. It was, I think, about the 1st of January, I am not positive. It was either during the last days of December or first days of January.

41. X Int. When did the company reject your proposition?

A. That is something I don't know. The first I knew of it, I kept after Mr. Larrabee for confirmation, and he said they had rejected it, but he thought he would get it through, & I let the thing re-
278 main; he said he would work it through the board. I had every confidence he would do it; he reported to me he never had, and he and I let it run simply because I wanted the trade got through.

Int. (By Mr. ALLEN.) I will ask you whether up to the time you received those notes back, as you have just stated in cross-examination, you had ever received for them any consideration from the North Missouri Insurance Company yourself?

A. Never a dollar; never did receive any consideration. I was to have $30,000 of stock, and that was to be as collateral in case the trade went through. The $30,000 stock was to remain in the company's hands as collateral for the last note, the amount credited on the $27,000 note.

Int. (By Mr. MYERS.) By what form of instrument was that to be effected, as the $30,000 of stock you never got?

A. It was an agreement; I signed the note, and used the small note as well; I could not recollect which was to be secured by the stock as collateral.

Int. Was it an ordinary promissory note, or what we call a collateral note?

A. Not a collateral note, an ordinary note secured by $30,000 of stock to be issued to me after the trade was put through. That trade was never consummated and the notes were returned.

(Signature waived.)

Affidavit of Albert Blair.

Albert Blair, on oath, states that the paper in the case of William R. Walker, assignee of the North Mo. Ins. Co., in bankruptcy, vs. J. T. Reister and others, known as the Griffith's guaranty, for the return of bonds loaned by the said Griffith to Albert Larrabee, was on or about the 21st day of May, 1873, handed to me by either Mr. Larrabee or Mr. Forbes, who were standing, at the time, at the door of Melone and
279 Epperson's bank. I was on my way from the hotel to the court-house. They requested me to call at the office of Col. Williams and Judge Barrow and obtain their signatures to the said paper. I found Mr. Barrow at his office, where he signed it. I found Col. Williams at the court-house, where he was engaged in some legal proceed

ings before the circuit judge. I called Col. Williams aside, gave him the paper, and told him that Mr. Larrabee wished him to sign it. I think I handed a pen to the colonel, who signed it, and returned to his case. When I went down street again I gave the paper to Mr. Larrabee or Colonel Forbes.

ALBERT BLAIR.

Subscribed and sworn to before me on this 13th day of January, 1876.

AUSTIN N. McGINDLEY,
U. S. Com'r Western District Mo.

And afterwards, to wit, on the 16th day of March, A. D. 1877, there was filed in the clerk's office of the district court of the United States for the eastern district of Missouri an agreement of counsel as to what the transcript of appeal shall contain, which said agreement is in the words and figures following, to wit:

Agreement as to transcript.

In the district court of the United States for the eastern district of Missouri. In Equity.

WILLIAM R. WALKER, ASSIGNEE OF THE NORTH Missouri Insurance Co., complainant,
against
JOSEPH T. REISTER ET AL., DEFENDANTS.

It is hereby agreed by and between the parties thereto that the transcript of appeal herein to the circuit court of the United States for the eastern district of Missouri shall contain the following pleadings, evidence, &c., and no more, to wit:

I. The bill and all pleadings in the cause.
II. All orders of the court and the decree thereof.
280 III. The evidence on behalf of complainant as follows, to wit:
1. The adjudication of bankruptcy of said co.
2. The assignment in bankruptcy to complainant.
3. Deposition of Albert Larrabee.
4. Deposition of Bright G. Barrow.
5. Do. do. Byron Griffith.
6. Do. do. W. F. Church.
7. Do. do. Wm. Selby.
8. Do. do. Zach. J. Mitchell.
9. Do. do. Wm. R. Walker.
10. Do. do. Jas. B. Melone (taken on the part of def'ts).
11. Statement to insurance department of Missouri, filed 1st February, 1873.
12. All exhibits to said depositions.

IV. Evidence for defendants, as follows, to wit:
1. Deposition of Web. M. Rubey (taken on part of complainant).
2. Do. do. James G. Howe (do. do.)
3. Do. do. W. W. Watkins, taken in the case of W. R. Walker, assignee, vs. S. G. Kitchen et al., and, by agreement of the parties herein, read and used as evidence in this cause.
4. Deposition of John F. Williams.
5. Do. do. Frank S. Curtiss.
6. Do. do. Wm. E. Moberly.

7. Affidavit of Albert Blair, which, by agreement of parties, was read and used as a deposition.

V. This agreement to form a part of the transcript herein.

(Signed) WILLIAM R. WALKER,
Com'pl't pro se.

(" ") EDMUND T. ALLEN,
Of Counsel for Defendants.

281, 282 STATE OF MISSOURI, INSURANCE DEPARTMENT.

I, Celsus Price, superintendent of the insurance department of the State of Missouri, do hereby certify that I have compared the annexed copy of annual statement of the North Missouri Insurance Company, of Macon, Mo., with the original, on file in this department, and that the same is a correct transcript therefrom, and of the whole of said original.

In witness whereof I have hereunto set my hand and affixed my official seal, at the city of St. Louis, this 22d day of November, A. D. 1875.

[SEAL.] CELSUS PRICE,
Superintendent.

283 [State of Missouri, insurance department. For stock companies other than life.]

Annual statement for the year ending December 1st, A. D. 187 , of the condition and affairs of the North Missouri Insurance Company, of Macon, Mo., made to the superintendent of the insurance department of the State of Missouri, pursuant to the laws of said State.

[President, John F. Williams; vice-president, William Forbes; secretary, Albert Larrabee; principal office, Macon, Missouri; organized and incorporated July, 1867; commenced business August, 1867.]

I. CAPITAL.

1	Whole amount of joint stock or guarantee capital authorized	$500,000
2	Whole amount of capital actually paid up in cash	$350,000
3	Amount of unpaid, but subscribed capital, for which subscribers' notes or other obligations are held.	$150,000

II. ASSETS.

			Dollars.	Cents.
1	Value of real estate owned by the company (less $, the amount of encumbrances thereon) as specified in Schedule A hereunto annexed		37,000	00
2	Loans on bond and mortgage (duly recorded and being first liens on the fee-simple) upon which not more than one year's interest is due, as per Schedule B		175,662	26
3	Loans on bond and mortgage (first liens) upon which more than one year's interest is due, of which $ is in process of foreclosure, as per Schedule B.			
4	Interest due on said bond and mortgage loans, $, interest accrued thereon, $6,460.99; total		6,460	99
5	Value of the lands mortgaged, exclusive of buildings and perishable improvements	$318,305		
6	Value of the buildings mortgaged (insured for $56,644.00 as collateral	$88,205		
7	Total value of said mortgaged premises (carried inside)	$406,510		

Annual statement—Continued.

8. *Account of stocks, bonds, and Treasury notes of the United States and of this State and of other States, and also of stocks and bonds of incorporated cities in this State, and of all other stocks and bonds owned absolutely by the company.*

	Total par value.		Total market value.			
	Dollars	Cents.	Dollars.	Cents.		
Macon County railroad bonds	43,700		37,145			
Schuyler County railroad bonds	75,000		63,750			
Pike County railroad bonds	20,000		18,000			
Clark County railroad bonds	4,500		3,600			
Memphis Scotland County railroad bonds	1,000		800			
Carrollton, Mo., school bonds	100		100			
Linneus, Mo., school bonds	240		240			
South Carolina State bonds (old)	20,000		10,000			
North Carolina State bonds (old)	23,000		8,050			
Keokuk and Kansas City railroad stock	1,000		800			
Mound City Life Insurance Company stock	10,000		10,000			
9 Total par and market value, carried out at market value.	$198,540		152,485		152,485	00
Amount carried forward					$371,608	25
284 Amount brought forward					371,608	25

10. *Account of stocks, bonds, and all other securities (except mortgages) hypothecated to the company as collateral security for cash actually loaned by the company, with the par and market value of the same, and the amount loaned on each.*

	Total par value.		Total market value.		Am't loaned thereon.			
	Dollars.	Cents.	Dollars.	Cents.	Dollars.	Cents.		
North Missouri Insurance Company stock	37,000	00	37,000	00	18,580	53		
City of California, Mo., bonds	1,900	00	1,900	00	900	00		
Keokuk and Kansas City Railroad stock	800	00	800	00	778	89		
11 Total par and market values and amount loaned thereon	39,700	00	39,700	00	20,259	42	20,259	42

12	All other loans made by the company, classified as follows, viz: On Bills receivable	$3,381		
	Call loans	3,150		
			$6,531	00
	Office furniture and personal property in offices at New York, St. Louis and Macon, $10,221.73; total		$16,752	73
13	Cash in the company's principal office in currency		7,201	12
	Cash belonging to the company deposited in bank		71,223	78
	Name bank.			
14	Total amount of cash items		78,424	90
15	Interest due and accrued on stocks not included in "market value"		600	00
16	Interest due and accrued on collateral loans		none.	
17	Gross premiums in due course of collection, $131,849.97, business of current month		186,650	62
18	Bills receivable, not matured, taken for fire, marine, and inland risks, $73,015.73; the same, past due, $5,791.90; total		78,807	13
19	All other property belonging to the company, viz: Salvage property and claims on losses already paid, $275.00; rents due and accrued, $300.00; due from other companies for reinsurances on losses already paid, $; bills receivable other than those taken for premiums, $; total		575	00
20	Stockholders' notes or other obligations given for capital subscribed, but not actually paid up in cash (carried inside), $150,000.			

Annual statement—Continued.

21	Bonds and mortgages, not first liens, and all other illegal items not constituting "actual" capital (carried inside). $				
22	The gross amount of all the assets of the company			$753,678	05
23	Amount which should be deducted from the above assets on account of bad and doubtful debts and securities, viz: From item No. , $; No. $; No. , $; total deductions,				
24	Aggregate amount of all the assets of the company, stated at their actual value			$753,678	05
285	III. LIABILITIES.			Dollars.	Cents.
		Dollars.	Cents		
1	Gross claims for losses against the company, adjusted and unpaid				
2	Gross losses in process of adjustment, or in suspense, including all reported and supposed losses	55,478	18		
3	Losses resisted, including interest, cost, and other expenses thereon	6,000	00		
4	Total gross amount of claims for losses				
5	Deduct reinsurances thereon, $; also, salvage claims thereon, $; total	61,478	18		
6	Net amount of unpaid losses			61,478	18
		Dollars.	Cents		
7	Gross premiums (without any deduction) received and receivable upon all unexpired fire risks running one year or less from date of policy, including interest premiums on perpetual fire risks, $488,837.94; reinsurance thereon at fifty per cent	244,418	97		
8	Gross premiums (without any deduction) received and receivable upon all unexpired fire risks running more than one year from date of policy, $143,589.38; reinsurance thereon pro rata	86,153	62		
9	Gross premiums (including both cash and bills, without any deduction) received and receivable upon all unexpired inland navigation risks, $; reinsurance thereon at fifty per cent				
10	Gross premiums (cash and bills, without any deduction) received and receivable on all unexpired marine risks	5,924	88		
11	Amount required to safely reinsure all outstanding risks			336,497	47
12	Amount reclaimable by the insured on perpetual fire insurance policies, being ninety-five per cent. of the premium or deposit received			none.	
13	Reinsurance fund and all other liabilities, except capital, under the life insurance or any other special department			none.	
14	Unused balance of bills, and notes taken in advance for premiums on open marine and inland policies or otherwise, returnable on settlement			none.	
15	Principal unpaid on scrip or certificates of profits which have been authorized or ordered to be redeemed			none.	
16	Interest due and declared, remaining unpaid and uncalled for			none.	
17	Cash dividends declared to stockholders on capital remaining unpaid			none.	
18	Due and accrued for salaries, rent, advertising, and for agency and other miscellaneous expenses			none.	
19	Due and to become due for borrowed money			none	
20	All other demands against the company, absolute and contingent, due and to become due, admitted and contested, viz: U. S. taxes due and accrued, $ none; State, city, county, or other taxes and assessments, $ none; commissions, brokerage and other charges due and to become due to agents and brokers on premiums paid and in course of collection, $ none; return premiums, $ none; total				
21	Total amount of all liabilities, except capital stock, scrip reserve, and net surplus			$397,975	65
22	Joint stock capital actually paid up in cash			350,000	00
23	Surplus beyond capital, as regards policy-holders			5,702	40
24	Amount of such surplus which constitutes a permanent reserve fund, represented by scrip, which, by the terms of its issue, cannot be redeemed so as to diminish said reserve (carried inside), $				
25	Aggregate amount of all liabilities, including paid-up capital stock, scrip reserve, and net surplus			753,678	05

	IV. INCOME DURING THE YEAR.	For fire risks. Dollars.	For fire risks. Cents.	For marine & inland risks. Dollars.	For marine & inland risks. Cents.	Dollars.	Cents.
1	Gross premiums received in cash, without any deduction	774,099	19	84,889	52		
2	Gross cash actually received on bills and notes taken for premiums, without any deduction	8,243	43				
3	Gross cash received for premiums	782,342	62	84,889	52		
4	Deduct only reinsurance, rebate, abatement, and return premiums	59,788	90				
5	Net cash actually received for premiums (carried out)	722,553	72	84,889		807,443	24
6	Bills and notes received during the year for premiums remaining unpaid (carried inside), $53,413.81.						
7	Received for interest on bonds and mortgages					10,767	62
8	Received for interest and dividends on stocks and bonds, stock loans and from all other sources					2,910	00
9	Income received from all other sources, viz: Rents, $976.05; interest on bills receivable and call loans, $3,186.87; exchange, 1,188.91; total					5,351	83
10	Deposit premiums (less five per cent.) received for perpetual fire risks (carried inside) $						
11	Received for calls on capital, $; for increased capital, $150,000; total $150,000						
1	Aggregate amount of income actually received during the year in cash					$826,472	33

236	V. EXPENDITURES DURING THE YEAR.	On fire risks. Dollars.	On fire risks. Cents.	On marine & inland risks. Dollars.	On marine & inland risks. Cents.	Dollars.	Cents.
1	Gross amount actually paid for losses (including $11,526.73 losses occurring in previous years)	270,607	99	32,464	53		
2	Deduct all amounts actually received for salvage (whether on losses of the last or of the previous years), $113.30; and all amounts actually received for reinsurance in other companies, $2,345.09; total deductions	2,000		458	39		
3	Net amount paid during the year for losses	268,607	99	32,006	14	300,614	13
4	Cash dividends actually paid, $ none; interest paid to scrip-holders, $ none; total, none.						
5	Scrip or certificates of profits redeemed in cash none.						
6	Paid or allowed for commissions and brokerage					155,203	67
7	Paid or allowed for salaries, fees, and wages					28,211	34
8	Paid for State, national, and local taxes in this and other States					8,122	00
9	All other payments and expenditures, viz: Interest on borrowed money, $ none; stationery, postage, expenses, & advertising, ; total					76,061	05
10	Amount of deposit premium returned during the year on perpetual fire risks (carried inside), $						
11	Aggregate amount of actual expenditures during the year in cash					$568,212	19

VI. MISCELLANEOUS.

	Scrip.	To policy-holders.		To stockholders.		Aggregate.	
		Dollars.	Cents.	Dollars.	Cents.	Dollars.	Cents.
1	Total amount of scrip dividends declared to date.....none.						
2	Deduct amount redeemed in cash, forfeited, purchased, and fractions.....none.						
3	Balance of scrip dividends deliverable and outstanding.....none.						
4	Scrip deliverable, not actually delivered.....none.						

Scrip dividends declared during the year, being at the rate of none per centum on participating premiums, none.

6 Marked-off premiums, or estimated earned premiums, on which said scrip dividends during the year were declared, none.

7 Cash received during the year for premiums on participating policies, deducting reinsurance, drawbacks, and return premiums, none.

8 Limit of scrip accumulations before any scrip will become redeemable, none.

9 Average percentage of scrip dividends declared to date, none per centum of premiums on participating policies.

10 Rate of interest paid on scrip, none per centum per annum.

	Risks and premiums	Fire risks.	Premiums thereon.		Marine and inland risks.		Premiums thereon.	
		Dollars.	Dollars.	Cents.	Dollars.	Cts.	Dollars.	Cents.
1	In force on the 31st day of December of the preceding year	8,050,032 85	178,297	58				
2	Written during the year	39,791,363 67	827,513	00	5,638,612	50	84,889	52
3	Total	47,841,396 62	1,005,810	58	5,638,612	50	84,889	52
4	Deduct those expired and marked off as terminated	20,517,611 81	368,596	13	5,548,245	50	78,964	64
5	In force at the end of the year	27,323,784 71	637,214	45	90,367	00	5,924	88
6	Deduct amount reinsured	205,237 50	4,787	13		8		
7	Net amount in force	27,118,547 21	632,427	32	90,367	00	5,924	88
8	In force, having not more than one year to run	21,657,981 21	488,837	94				
9	Having more than one and not more than three years to run	1,668,571 00	33,035	03				
10	Having more than three years to run	37,919,159 00	110,554	35				
11	Perpetual risks in force and interest premiums....none							
12	Net amount in force Dec. 31, 1872	27,118,547 21	632,427	32	90,367	00	5,924	88

General interrogatories

1 Total premiums received from the organization of the company to date, $1,233,170.09; total losses paid from organization to date, $415,076.37.
2 Total cash dividends declared since the company commenced business, $; total losses incurred during the year, $350,038.90.
3 Total amount of the company's stock owned by the directors at par value, $57,000.00; total dividends declared payable in stock, none.
4 Total amount loaned to officers and directors, $17,200.00; total loaned to stockholders not directors.
5 Amount deposited in different States and countries for the security of policy-holders, none; deposited as follows: In the State of , none; in the State of , none.

	Business in the State of Missouri during the year.	Fire risks.		Marine and inland risks.		Aggregate.	
		Dollars.	Cents.	Dollars.	Cents.	Dollars.	Cents.
6	Fire, marine, and inland risks taken	15,807,244	52	2,129,428	50	17,936,673	02
7	Premiums received	336,954	22	30,813	32	367,767	54
8	Losses paid	106,029	69	27,676	03	133,705	72

9 Losses incurred during the year in the State of Missouri, $
10 Paid in the State of Missouri during the year for taxes, licenses, and insurance department fees, $695.16.

287 STATE OF MISSOURI,
County of Macon, ss:

John F. Williams, president, and Albert Larrabee, Secretary of the North Missouri Insurance Company, being duly sworn, depose and say, and each for himself says, that they are the above described officers of the said company, and that on the thirty-first day of December last, all the above-described assets were the absolute property of the said company, free and clear from any liens or claims thereon, except as above stated; and that the foregoing statement, with the schedules and explanations hereunto annexed and by them subscribed, are a full and correct exhibit of all the liabilities and of the income and expenditures and of the general condition and affairs of the said company on the said thirty-first day of December last, and for the year ending on that day, according to the best of their information, knowledge, and belief, respectively.

JOHN F. WILLIAMS, *Pres.*
ALBERT LARRABEE, *Sec'y.*

Subscribed and sworn to before me this 28th day o January, A. D. 1873.
[SEAL.]
FRANK S. CURTIS,
Notary Public.

(When the above affidavi is taken before a notary public in the State of Missouri, or a Missouri State commissioner in another State, the following certificate is unnecessary:)

SCHEDULE A.

Containing a brief description of all the real estate owned by the company, with the cost and market value thereof, and also the value on the company's books, with a correct statement of the amount of all liens and encumbrances thereon, including principal and interest due and accrued.

No.	Quantity or dimensions and location of land; size and description of building.	Valuation of premises.	Cost value of premises.	Description and nature of encumbrances.	Amount of encumbrances.
		Dollars. Cents.	*Dollars. Cents.*		*Dollars. Cents.*
	6 7/100 arpents land with two story brick dwelling and brick outhouses on Cook Avenue, St. Louis, Mo	24,500	24,500		
	62x92 feet, part lot 7 & 8, block 119, Macon, Mo. Office building three story brick	11,000	11,000		
	S. ½ lot 3, block 109, Macon, Mo One story frame building	1,500	1,500		
	Total value of real estate over and above encumbrances	37,000			

SCHEDULE B.

Containing a description of all the bonds and mortgages owned by the North Missouri Insurance Company on the 31st day of December, A. D. 187 .

No.	Date of mortgage.	Mortgage recorded. In the county of—	Book of mortgs.	Page.	Amount of principal unpaid.	Value of property mortgaged.	Amount of insurance held by the company on the buildings.	Location—(Street and No.)	Tp.	R.
					Dollars. Cents.	*Dollars.*	*Dollars.*			
1	June 11, 1869	Macon	1	411	2,800	5,500	1,600	70 ft. in block 42, Macon, Mo.		
								W. ½ lot 1-2 " 87 " "		
2	Oct. 3, 1872	"	15	283	4,500	9,200	2,000	920 acres, &c., 17, 21, 25, 26, 28, & 36	56	13
								54 " " 16, 17	57	14
3	Nov. 30, "	"	15	284	1,850	4,000	600	Lots 97, 98, blk 9, Macon, Mo.		
4	May 23, "	Knox	5	587	200	500		40 acres, sec. 36	60	13
5	Dec. 30, 1871	Macon	10	614	2,000	4,200	1,500	½ lot 1, blk 94, Macon, Mo.		
6	June 5, 1869	"	1	400	399 60	800		½ " 5, " 109, " "		
7	Oct. 12, 1872	Linn	14	133	450	1,000		40 acres, sec. 29	58	21
8	Jan'y 4, 1869	Macon	4	523	2,535	5,800	1,000	160 " " 19	58	13
								160 " " 22	56	16
9	Oct. 17, 1872	"	15	273	1,300	3,000		40 " " 5	56	14
								Lots 1, 2, 3, blk 136, Macon, Mo.		
10	May 3, "	"	15	105	4,000	8,500	2,400	½ of 28 acres, sec. 21	57	14
								253 " " 19, 30	62	14
11	Dec. 30, 1871	Adair	5	429	2,500	5,100	700	11 " " 26	62	15
								76 " " 23	64	15
12	Oct. 14, 1872	Macon	15	263	2,650	5,500	600	80 " sec. 15	56	13
								280 " " 25	57	13
13	July 2, "	Sullivan	2	173	500	1,200		120 " " 31	61	21
								Lots 6, 7, blk 41, Macon, Mo.		
14	Nov. 13, "	Macon	15	272	1,250	2,700	700	½ 7 & 8, " 73, " "		
								400 acres, sec. 20, 22	56	17
15	Oct. 10, "	Charlton			3,200	7,200		160 " " 8	55	17
								40 " " 35	56	18
16	Sept. 14, "	Macon	15	287	6,000	12,500	900	80 " " 22	57	14
								W. ½ blk, 144, Macon, Mo.		
17	Dec. 30, 1871	Sac, Ia	12	215	1,800	5,000		" " 61, Keokuk, Ia.		
18	" 30, "	Macon	10	612	1,000	8,000		Lots 13 & 14, blk 110, Macon, Mo.		
19	Oct. 1, 1872	"	15	260	300	600		40 acres, sec. 19	58	14
								280 " " 3, 4	58	14
20	" 28, "	"	15	288	4,750	10,000	2,000	Lots 39, 40, Cal. add., Macon, Mo.		
								9 lots, blk 13, Brunswick, "		
								2 " " 18, "		
21	Nov. 19, "	Charlton			3,500	7,100	600	160 acres, sec. 1	53	21
								160 " " 31	54	20
								80 " " 17, 18	53	19

									60	17
									59	15
									60	15
								160 " " 11	60	16
								160 " " 6	67	15
								20 " " 31	67	15
								40 " " 35		
								19 " " 11		
								100 " " 3	56	13
								40 " " lot 1, blk 8, Colorado City, Mo.		
								160 " " 1		3
								160 " " 12		3
								160 " " 13		3
								160 " " 24		3
								160 " " 25		3
								160 " " 36		3
								160 " " 7		4
								160 " " 18		4
								160 " " 19		4
								160 " " 30		4
								160 " " 31		4
								160 " " 6		5
								160 " " 7		5
								160 " " 18		5
								160 " " 19		5
								160 " " 30		5
								160 " " 31		5
								160 " " 6		6
								160 " " 7		6
								160 " " 18		6
								160 " " 19		6
								160 " " 30		6
								160 " " 31		6
								160 " " 6		7
								160 " " 7		7
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								160 " " 6		10
								160 " " 7		10
								160 " " 18		10
								160 " " 19		10
								160 " " 30		10
								160 " " 31		10
								160 " " 6		11
								160 " " 7		11
								160 " " 18		11
								160 " " 19		11
								160 " " 30		11
								160 " " 31		11
								160 " " 6		12
								160 " " 7		12
								160 " " 18		12
								160 " " 19		12
								160 " " 30		12
								160 " " 31		12

22	Dec. 26, "	Macon	15	275	560	1,600		160 " " 11	60	17		
								20 " " 6	59	15		
			10	611	400	1,050	200	40 " " 31	60	15		
23	" 30, "	"						10 " " 35	60	16		
			13	591	1,500	3,000	500	100 " " 11	67	15		
24	" 30, "	Davis, Ia	4	51	950	2,000	1,000	40 " " 3	67	15		
								Lot 7, bl'k 11; lot 1, bl'k 8, Colorado City, Mo.	56	13		
25	Oct. 30, "	Schuyler	15	202	600	1,500	200	120 acres, sec. 14				
								Lot 8, bl'k 151, Macon, Mo.	26	2		
26	" 3, "	Macon	15	255	400	900		160 acres, sec. 11				
								9 lots, bl'k 22, Macon, Mo.	58, 60	18, 20		
27	Nov. 19, "	Carter	15	346	800	1,600	150	80 acres, sec. 35; 40 acres, sec. 23	56	22		
								{ 40 " " 28	61	15		
28	Dec. 23, 1871	Macon	C.		1,200	2,500		{ 240 " " 33, 34	61	16		
								{ 240 " " 26				
29	Nov. 14, 1872	Siren	Filed	253				80 Lots 5, 6, 7, bl'k 122, Macon Mo.	57	17		
			"					40 acres, sec. 17				
		Livingston			4,000	8,000	1,500	¼ lot 14, bl'k 88, Macon, Mo.				
		Adair	"		1,000	2,000	600					
30	Nov. 27, "	Macon	10	610	225	500						
31	Dec. 30, 1871	"	15	261	2,000	7,500	2,000					
32	Oct. 4, 1872	"	1	403								
33	June 5, 1869	"										
						3,000	1,550	{ ½ lot N. W. cor. Burck & Rollins st., Macon, Mo.	60	17		
229			15	254	1,550			{ 80 acres, section 28	58	14		
34	Nov. 15, 1872	Macon				5,000	700	{ 160 " " 3	59	14		
			15	276	2,350	2,000	600	{ 160 " " 34	57	13		
35	Dec. 16, "	"						{ 40 " " 19	57	14		
			10	607	1,000	6,000		{ 80 " " 16				
36	" 30, 1871	"						{ 7½ " adjoining Macon City, Mo.	57	14		
			10	596	2,000	2,000		} 7 acres, sec. 16				
37	" 31, "	"						{ 6 " block 30, Alton, Ills.	60	14		
			15	205	600	25,000	7,500	{ Lots 1, 2, 3, 4, block 30, Alton, Ills.	57	14		
								} 1,000 acres, sec. 9, 10, 11, 13, & 14	57	13		
38	May 31, 1872	Madison, Ill			10,000	15,000		40 " " 21	36	14		
			15	259	6,250	3,000		10 " " 16	57	8		
39	Oct. 10, 1872	Macon	10	465	1,000	13,000		10 " " 13, 14	40	14		
								{ 120 " " 17	57	14		
40	Nov. 26, "	"	10	604	3,000	2,400		{ 40 " " 33	56	21		
								320 " " 4, 5				
41	June 30, 1871	"	15	285	1,000	7,000	500	105 " " 33	57	14		
								320 " "				
42	Dec. 25, "	"	I.	283	3,500	5,250		6 lots bl'k 44, Alton, Ills.	59	13		
								1 " " 598, St. Louis				
43	Nov. 27, 1872	Maries	15	286	2,500	4,000		28 acres, sec. 17				
								{ 280 " " 24, 25				
44	Dec. 30, 1871	Macon			2,000	11,000	4,000	1 lot bl'k 110, Macon, Mo.				
								3 " " 13, "				
45	" 20, 1872	Charlton			5,250	5,500	2,500	1 " " 398, St. Louis, "				
								240 acres, sec. 33, 34				
46	" 30, "	Madison, Ills	429	29	3,000			40 " " 26				
								280 " " 25				
47	Nov. 20, "	St. Louis	15	271		6,720	500	½ " " 27				
					2,978	50		of 3d principal meridian.				
48	Jan. 30, 1871	Macon	15	269	600	1,400	500	40 acres, sec. 22				
49	Oct. 26, 1872	"	1	104	1,440	4,000	1,000					
50	May 30, 1872	"	466	214	3,000	5,500	2,500					
51	Jan'y 7, 1869	St. Louis	F	258	2,500	5,600						
52	Oct. 22, 1872	Adair	10	601								
53	Dec. 30, 1871	Macon	8	222		6,000	2,000					
		Page, Ia			3,000							
		Winnebago, Ill	Filed.									
54	Oct. 30, 1872					480						
			14	128	200							
55	Sept. 3, "	Linn										

Schedule B—Continued.

No.	Date of mortgage.	Mortgage recorded. In the county of—	Book of mortg's.	Page.	Amount of principal unpaid.	Value of property mortgaged.	Amount of insurance held by the company on the buildings.	Location—(Street and No.)	Tp.	R.
					Dollars. Cents.	*Dollars.*	*Dollars.*			
56	Feb'y 1, 1871	Washington	A	280	9,000	20,000	1,500	1,920 " "	37	2 E.
57	Oct. 2, 1869	Macon	1	488	575	1,200	800	60 " " 34	36	2 E.
58	June 26, 1872	"	15	290	1,650	3,500	300		36	1 E.
59	Ap. 15, "	Chariton			2,000	4,000	500	Lots 1, 2, bl'k 38, Macon, Mo.	58	15
60	Sept. 19, 1868	Macon	4	189	864	2,500	864	97 acres, sec. 33, 34		
61	June 5, 1869	"	1	413	3,300	6,500	2,000	160 " " 5	58	14
62	Oct. 16, 1872	Adair	F	323	250	520		½ lot 12, bl'k 28, Macon, Mo., 120 acres, sec. 32	53	20
63	June 6, "	Macon	15	274	500	1,000		5 lots, bl'k 99 " "	56	14
64	Aug. 1, "	"	15	276	450	900		26 acres, sec. 8		
65	" 9, "	"	15	289	500	1,000	500	Lot 6, bl'k 143, Macon, Mo.	62	15
66	Jan'y 30, 1871	St. Louis	426	152	3,000	6,000		60 acres, sec. 22		
67	June 5, 1869	Macon	1	399	600	2,500	600	½ bl'k 38, Macon, Mo.	59	14
68	July 31, 1871	"	10	464	1,000	4,000		Part of lot 5 at S. E. cor. of Locust st. & Page avenue, St. Louis, Mo.		
69	Dec. 30, "	"	10	599	1,700	3,500		Lot 4 & 5, bl'k 108, Macon, Mo.		
290								17 lots in " "		
70	Nov. 13, 1872	Howard			2,750	5,500	1,000	230 acres { sec. 28, 25	57	14
71	Sept. 14, "	Harrison	1	346	550	1,200		" 34	60	16
72	Oct. 24, "	Macon	15	280	1,500	3,600	500	220 acres, sec. 32	51	14
73	July 2, 1869	Macon	1	426	1,280 16	7,000	1,280	360 " " 7, 17, 18	62	26
74	Dec. 30, 1871	Buchanan	67	214	345	690		60 " " 7, 18	58	14
75	Oct. 2, 1872	Chariton	Filed.		3,500	8,200		40 " " 13	58	15
76	Dec. 26, 1872	Livingston	Filed.		13,500	27,000		40 " " 32	60	14
77	Aug. 1, "	Macon	"		3,500	9,000		40 " " 8	57	14
78	Sept. 4, "	"	"		3,500	8,000	2,000	Part lots 7 & 8, bl'k 88, Macon, Mo.		
		Total			175,662 26	406,510	56,644	" " 9 " 10, St. Joseph, "		
								40 acres, sec. 4	52	18
								200 " " 16	56	21
								80 " " 36	55	21
								80 " " 35	55	21
								4 lots in Brunswick.		
								157½ acres adj. Chillicothe.		
								40 " sec. 17	57	14
								10 " " 20	57	14
								15 " " 15	57	14

291 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, Joseph H. Clark, clerk of the district court of the United States in and for the eastern district of Missouri, do hereby certify the writings hereto annexed to be a true copy of the record and proceedings in accordance with the agreement filed by counsel as to what transcript of appeal shall contain, in case No. 2622, A. D. 1877, of William R. Walker, assignee in bankruptcy of North Missouri Ins. Company, bankrupt, plaintiff, against Joseph T. Reister et al., defendants, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in said district, this seventeenth day of March, in the year of our Lord eighteen hundred and seventy-seven.

[SEAL.] JOSEPH H. CLARK,
Clerk of said Court.

And afterwards, to wit, at the said term of said circuit court, begun and holden as aforesaid, the following proceedings were had in said case, on Thursday, the 29th day of March, A. D. 1877, to wit:

Decree of affirmance.

WILLIAM R. WALKER, ASSIGNEE OF THE North Missouri Insurance Company, appellant,
vs.
JOSEPH T. REISTER ET AL., APPELLEES.

This day come the said parties, by their solicitors, the appellant by Nathaniel Myers, esquire, and the appellees by James O. Broadhead, esquire, and submit this cause to the court upon the record as certified from the district court of the United States for the eastern dis-
292 trict of Missouri, and the argument of counsel; upon consideration whereof, and being fully advised in the premises, it is now ordered, adjudged, and decreed, that the decree of said district court, in form aforesaid by the said district court rendered, be, and the same is hereby, in all things affirmed.

It is further ordered that the said appellees recover against the said appellant the costs herein to be taxed.

MEM.—His honor Judge Treat took no part in the disposition of this case.

And afterwards, at said term of said circuit court, begun and holden as aforesaid, the following further proceedings were had in said case, on Friday, the 6th day of April, 1877, to wit:

Appeal allowed.

WILLIAM R. WALKER, ASSIGNEE, &C., APPELLANT,
vs.
JOSEPH T. REISTER ET AL., APPELLEES.

This day comes the said appellant, by his solicitor, and prays the court

to grant him an appeal from the decree rendered herein. It is thereupon ordered that an appeal be granted herein to the Supreme Court of the United States, and that an appeal bond be given by said appellant in the sum of one thousand dollars.

And afterwards, at said term of said circuit court, the following further proceedings were had in said case, on Saturday, the 7th day of April, 1877, to wit:

Bond filed, &c.

WILLIAM R. WALKER, ASSIGNEE, &C., APPELLANT,
vs.
JOSEPH T. REISTER ET AL., APPELLEES.

This day comes the said appellant and presents his bond for appeal in the sum of one thousand dollars, which bond is approved and ordered to be filed as part of the record in this cause. And it is now ordered that the clerk of this court forthwith make out and certify a full and complete transcript of the record herein to the Supreme Court of the United States.

And the said bond, so approved and filed as aforesaid, is in the words and figures following, to wit:

293 *Bond.*

Know all men by these presents that I, William R. Walker, assignee in bankruptcy of the North Missouri Insurance Company, am held and firmly bound unto Joseph T. Reister, John F. Williams, George P. Glaze, John M. Loudon, Philip T. Holman, Isaac Hays, James B. Melone, Alfred L. Shortridge, Web M. Rubey, Benjamin R. Dysart, Richard A. Melone, Henry S. Glaze, Eli C. D. Shortridge, and Charles G. Epperson, in the full and just sum of one thousand dollars, to be paid to the said Joseph T. Reister, John F. Williams, George P. Glaze, John M. Loudon, Philip T. Holman, Isaac Hays, James B. Melone, Alfred L. Shortridge, Web M. Rubey, Benjamin R. Dysart, Richard A. Melone, Henry S. Glaze, Eli C. D. Shortridge, and Charles G. Epperson, their heirs, executors, administrators or assigns, to which payment well and truly to be made I bind myself and my successors, as assignee aforesaid, jointly and severally, by these presents, sealed with my seal, and dated this seventh day of April, in the year of our Lord one thousand eight and seventy-seven.

Whereas lately, at the March term, 1877, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between the said William R. Walker, assignee aforesaid, plaintiff, and the said Joseph T. Reister, John F. Williams, George P. Glaze, John M. Loudon, Philip T. Holman, Isaac Hays, James B. Melone, Alfred L. Shortridge, Web M. Rubey, Benjamin R. Dysart, Richard A. Melone, Henry S. Glaze, Eli C. D. Shortridge, and Charles G. Epperson, defendants, a decree was rendered dismissing the bill of the said plaintiff, and the said plaintiff having been allowed an appeal from said decree to the Supreme Court of the United States:

Now, the condition of the above obligation is such that if the said William R. Walker, assignee aforesaid, the plaintiff in said suit, shall prosecute said appeal to effect and answer all damages and costs if he

fail to make good his said appeal, then the above obligation to be void, else to remain in full force and virtue.

[SEAL.] WILL'M R. WALKER,
Assignee in Bankruptcy of the North Missouri Insurance Company.

294 Approved by—

JOHN F. DILLON,
Circuit Judge.

295 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto attached to be a true copy of the record and proceedings in case No. 1007, of William R. Walker, assignee in bankruptcy of the North Missouri Insurance Company, plaintiff, against Joseph T. Reister et al., defendants, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in said district, this eleventh day of May, in the year of our Lord eighteen hundred and seventy-seven.

[SEAL.] M. M. PRICE,
Clerk of said Court,
By A. P. SELBY,
Deputy.

(Indorsement on cover:) No. 372. William R. Walker, assignee in bankruptcy of the North Missouri Insurance Company, appellant, vs. Joseph T. Reister et al. E. Missouri C. C. U. S. Filed 20th December, 1877.

REC. 372—14

FILED
NOV 20 1880
JAMES H. McKENNEY, Clerk.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1880.

WILLIAM R. WALKER,
ASSIGNEE IN BANKRUPTCY OF THE NORTH MISSOURI INSURANCE COMPANY,
Appellant,
vs.
JOSEPH T. REISTER ET AL.,
Respondents.
No. 110.

APPEAL FROM UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF MISSOURI.

STATEMENT AND BRIEF FOR APPELLANT.

NATHANIEL MYERS,
For Appellant.

St. Louis: Press of G. I. Jones & Co.

IN THE

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OCTOBER TERM, 1880.

WILLIAM R. WALKER,
ASSIGNEE IN BANKRUPTCY OF THE NORTH MISSOURI INSURANCE COMPANY,
Appellant,
vs.
JOSEPH T. REISTER ET AL.,
Respondents.
} No. 110.

APPEAL FROM UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF MISSOURI.

STATEMENT AND BRIEF FOR APPELLANT.

This is a bill in equity, brought in the District Court, against the directors and officers of the North Missouri Insurance Company, bankrupt, to compel an accounting for an

alleged waste of assets of the company to the extent of over $100,000, the sureties on the bond of the treasurer being also joined as co-respondents.

The assets alleged to have been thus wasted are the following: —

	Face Value.	Real Value.
Bonds of Schuyler County, Missouri	$75,000	$63,750 00
" Macon "	31,500	26,775 00
" Knox "	8,500	7,225 00
" The Burlington and South-Western Railway Company	13,000	11,050 00
Normal School Bonds	350	295 40
Masonic Bond	100	100 00
One note of William E. Moberly, of $27,000, bearing a credit of $13,500, and secured by deed of trust on real estate	13,500	13,500 00
One other note of Moberly	13,500	13,500 00
Total real value		$136,195 40

The bill charges that while the defendant directors held their offices as such, during the years 1872 and 1873, the company owned and possessed the said securities, and that it was the duty of the directors to preserve the same for the benefit of the creditors and stockholders of the corporation; but that, unmindful of their duty, they parcelled out and distributed the said assets among themselves and friends, without consideration, and in fraud of the company and its creditors, and thereby, through their fraud and breach of trust, the said assets became wholly lost to the company and its creditors, and to complainant.

The prayer is for an accounting and for general relief.

The said company was a fire insurance company, and the bill (*rec.*, p. 15 *et seq.*) refers to the statute law of Missouri requiring such companies to file annually with the Insurance Department of the State a sworn statement, showing in detail its assets and liabilities, etc., and to submit to a personal examination of its affairs by the State Superintendent of Insurance, etc.; that the directors caused such statement to be filed, listing

therein, among other things, the said assets; and also, in May, 1873, at an examination of its affairs by the State Superintendent of Insurance, they represented said assets to belong to the company, and, in fact, exhibited said assets as assets of the company to the said superintendent, and also to the Superintendent of the Insurance Department of the State of Ohio, who was at the same time making a similar examination of the company, and thereby the defendants obtained for the company a credit of over $500,000; that over $500,000 of claims have been proven and allowed against the estate of the company, and that its assets, including those aforesaid, are wholly inadequate to pay the same.

The bill was dismissed as to two of the defendants, Forbes and Larrabee. The remaining seven directors answered jointly, and the sureties of the treasurer filed a separate answer.

The answer of the defendant directors amounts to a specific denial of the allegations of the bill. The sureties rely largely on the proposition that the treasurer was, as such, the custodian merely of the moneys of the company and not of its other assets, and that the bond signed by them secures a faithful accounting by the treasurer merely of the company's moneys, and they claim that this term does not embrace bonds and other securities. The treasurer was, at the times referred to, a banker in Macon, Missouri, where the company had its main office. He had the custody of all the assets in controversy here, except the notes of Moberly; but it is urged by the defendants that he had such custody, not as the company's treasurer but as its banker merely. The District Court, construing the bond in favor of the sureties, dismissed the bill as to them at the close of the complainant's testimony. At the close of all the testimony the District Court dismissed the bill as to all the defendants, and, on appeal to the Circuit Court, the decree was affirmed, and from that decree of affirmance the complainant appeals here.

The testimony is quite voluminous, but chiefly in reference to matters and transactions upon which the defendants base their hope of escape.

It is uncontradicted that the company, at the times stated, possessed each and all these assets, listed them in the sworn statement of assets filed in the Insurance Department, and exhibited them at the office of the defendant Melone, the treasurer in Macon, as assets of the company, to the Insurance Superintendents of Missouri and Ohio. And it is also undisputed that these assets were parcelled out without consideration.

But it also appears, if the court will allow the defendants to rely thereon, that these assets had been "borrowed" by the defendants for the use of the company, at a time when it was in financial distress, and was about to be examined by the Insurance Superintendents, to enable the company to represent itself as the owner of these assets, and so deceive the State Insurance Departments and the public, and fraudulently evade the provisions of the statutes concerning fire insurance companies, and to induce the Insurance Superintendent to permit the company's license to do business to continue unrevoked. At the time these assets were thus borrowed, the lenders were informed of the company's purpose, and assured they should be returned to them when the exhibition was over, and accordingly they were so returned. The home office of the company was at Macon, Missouri, and each and all the directors resided there. The president, John F. Williams, was a lawyer, so also was its secretary; and, in short, all its managing men were looked upon in the little community in which they dwelt as men of character and responsibility.

The company began its career in 1867, and soon acquired an extensive business. At the time of its bankruptcy, in October, 1873, it was carrying risks to the amount of $50,000,000. Towards the close of its career, while under the control of the defendants, it was managed in utter disregard of every principle of honesty. The active manipu-

lation of its affairs was *abandoned* by the president, and other officers and directors, to the secretary, Larrabee. They seldom attended meetings of the Board; and, indeed, for the last twelve months of its existence, though its business was so vast, yet no record was kept of the proceedings and doings of the Board in any record book. The president, Williams, and the treasurer, Melone, claim to have known nothing whatever of the details of the company's affairs, and indeed to have known no more about the company's business than a total stranger. Even in the matter of filing annual sworn statements of assets and liabilities in the offices of the various insurance departments of the States in which the company did business, the president says he signed and swore to such statements, in the hurry of jury trials in the court-house, not only without verifying the statements contained therein, but in absolute ignorance of the contents of the documents thus sworn to by him. The directors never once took any account of stock; never had a production of their assets either before the Board or before a committee. In short, they simply loaned the company the use of their names — consented to bear the honors of their positions, but performed not one of the duties. A few months before the bankruptcy of the company — to wit, in May, 1873 — the insurance superintendents of Missouri, Illinois, and Ohio demanded a special examination of the company's affairs, and a production and inspection of its assets at the home of the company in Macon. This caused a ripple; indeed it caused a decided commotion in the otherwise placid management, or absence of all management, in the company's affairs. Something had to be done. The company was very largely in debt. It had a fine business; well-known officers; plenty of liabilities — everything but assets. So the managers leagued together to "borrow the use" of the one thing needful. From two parties they got the $75,000 of Schuyler County bonds, giving one a hat and the other a suit of clothes, and a certificate for one share of paid-up stock, for the accommo-

dation. From another they got the Macon County and Knox County bonds; from another, the Railroad bonds. A small lot of bonds they got from the legal adviser of the company, Judge Barrow, — who figured largely in the procurement of almost all the borrowed bonds, and who, thereby, got himself known as judge Borrow. In several instances the lenders received written obligations signed by Barrow and by the secretary and president, as individuals, guaranteeing the speedy return of these bonds. These bonds were all borrowed in about tweuty-four hours, and were taken to the treasurer, Melone, at his banking-house, and were left with him. He made a list of them for the use of the insurance superintendents, and the bonds were exhibited by him to these superintendents, at his bank, as the assets of the company. The Ohio superintendent, accepting these bonds as assets of the company, still thought the company unsound. In every other State the company continued to do business from that time, May, until October, when its creditors forced it into bankruptcy. Meanwhile these borrowed bonds were returned by the treasurer, Melone, to the lenders upon orders signed by the president and secretary. None of the defendants gave themselves any concern about the matter; made no objection to the return, and made no effort to regain any of the bonds. The decree of the District Court was affirmed in the following oral —

Opinion of Judge Dillon, March 29, 1877.

"This case is of sufficient importance in amount and principle, if I had the time, to justify a careful statement in writing of the views which I entertain of it, but I have not the time without delay in the matter; and, inasmuch as the conclusion at which I have arrived perhaps is as satisfactory to my own mind as it would be if I should take time for further reflection, I proceed to announce it very briefly; because, as the case was finally submitted to me in argu-

ment, the controverted points in it are reduced to a very few — a single one, perhaps, ultimately.

Mr. Walker, the complainant in this case, is the assignee in bankruptcy of the North Missouri Insurance Company. Reister and others, the defendants, were officers or directors of that bankrupt institution, and the object of the bill is to recover against these defendants for the fraudulent and illegal misappropriation, during the time in which they were in office, of the funds of the company.

The case, as stated in the bill and as shown in the proofs, may be briefly summarized in this way. This company was not organized in fraud of the law, but was soon afterwards carried on by the parties concerned, by the main men concerned in it, in direct violation of all the requirements of the law statute, and of all principles of honesty and fair dealing. It was a fraudulent concern. In order to cover up their condition, certain of the leading men connected with it did this. They borrowed temporarily, or rather procured the temporary use of certain assets fraudulently — $75,000 of what were known as Schuyler County bonds; about $30,000 known as Macon County bonds, and certain other securities, amounting in all to $140,000, more or less. When a visit from the insurance commissioner was anticipated, these leading men — managing men — went to the owners of these Schuyler and Macon County bonds and the owners of this stock and said, "We want to borrow for a temporary purpose; we will return it to you;" and the owners consented to this use of it. I state the case for the purpose of disposing of it as strongly as the plaintiff claimed it to exist, and no stronger than I believe it did in point of fact exist. They loaned these officers and directors — not all actively participating in it, but some of them — these bonds; and, when the commissioner came on to examine into the affairs of the company, they exhibited them to him, saying, "Here are so many Schuyler County bonds, or so many Macon County bonds, or so many bonds of certain roads;" and this exhibition

of the assets went into the official reports of the commissioner; and, in consequence of this he was deceived, and recommended the company as having complied with the requirements of the law to protect the policy holders and the credit of the company. Finally, a commissioner from Ohio by the name of Church, who was not satisfied with a perfunctory discharge of his duty, came along, and went to the bottom of the matter thoroughly. He says: "I want to see your books; where did you get those bonds, and what did you pay for them?" and he soon discovered, when he went at it in good earnest, that there was fraud there; and he did not pass the company, but declared it out of line, and all that. The parties made an effort to restore their capital, which failed, and they were forced into bankruptcy.

Now this bill is brought against the officers and directors of the insurance company, some of whom, at all events, knew of this borrowing of the Macon and Schuyler County bonds, and other property, and the gravamen and gist of this bill is, by virtue of the transaction which is stated in the bill, and which I have here outlined, that these Schuyler and Macon County bonds became and were the property of the corporation; and that being the property of the corporation, the act of these parties in restoring them to the owners, to the previous owners, to the persons from whom they had been obtained, was illegal, without consideration, and was a misappropriation of those bonds, and therefore the parties are liable for it. That is the prayer of the bill.

Now the case made is not one, as ultimately insisted upon at all events, in which the assignee in bankruptcy seeks to recover because of the injuries which were perpetrated by this fraud, to particular creditors. It is conceded by Mr. Myers in his argument, that if an injury of tha kind was perpetrated the redress for it must be sought by the person injured. That is a right that does not pass to the assignee in bankruptcy. He only claims to recover for such an injury as was an injury to the general creditors, as

I understand it; and that injury, in the case as made and insisted upon, consists in the misappropriation of the property of this company; that, he says, is an injury to the stockholders, creditors, and everybody, and that is a right which passes to the assignee in bankruptcy and may be asserted by him; and if this property became, under those circumstances, the property of the company, undoubtedly, then, the theory of this action is well conceived, and under the proofs in this case the action can well be maintained; but the question is, were these Schuyler County bonds, and these Macon County bonds, and these securities thus obtained — did they become, the property of the company? Now, in point of fact, of course they never did; they parted with no consideration for them; they never bought them or intended to acquire absolute title to them; and, as between the company, the corporation, and the owners, there is no principle of estoppel which prevents an inquiry into the actual facts of the case; because the very essence of an estoppel is a representation which deceives some one who acts upon it.

Now the company was not deceived in this matter; they knew all the time why these bonds had been obtained, and the creditors were not injured by their return, because of the return of assets or property which had belonged to the company; for, as between the company and these men, the company never owned them; and Mr. Myers disclaimed in his argument the right to recover on the ground of estoppel; and he ultimately rested his case in his argument on this proposition: First, that these bonds were in fact, by this transaction, the bonds of the company; they were in possession of them; they had acquired and exhibited them as their own; and therefore he proved that fact, that these bonds were in possession of the company, and that they had exhibited them. He made out a *prima facie* case of ownership in the company of those bonds; and then, having shown that they had been returned without consideration to these parties, he says, "I have made out my case."

of the assets went into the official reports of the commissioner; and, in consequence of this he was deceived, and recommended the company as having complied with the requirements of the law to protect the policy holders and the credit of the company. Finally, a commissioner from Ohio by the name of Church, who was not satisfied with a perfunctory discharge of his duty, came along, and went to the bottom of the matter thoroughly. He says: "I want to see your books; where did you get those bonds, and what did you pay for them?" and he soon discovered, when he went at it in good earnest, that there was fraud there; and he did not pass the company, but declared it out of line, and all that. The parties made an effort to restore their capital, which failed, and they were forced into bankruptcy.

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Now the case made is not one, as ultimately insisted upon at all events, in which the assignee in bankruptcy seeks to recover because of the injuries which were perpetrated by this fraud, to particular creditors. It is conceded by Mr. Myers in his argument, that if an injury of tha kind was perpetrated the redress for it must be sought by the person injured. That is a right that does not pass to the assignee in bankruptcy. He only claims to recover for such an injury as was an injury to the general creditors, as

I understand it; and that injury, in the case as made and insisted upon, consists in the misappropriation of the property of this company; that, he says, is an injury to the stockholders, creditors, and everybody, and that is a right which passes to the assignee in bankruptcy and may be asserted by him; and if this property became, under those circumstances, the property of the company, undoubtedly, then, the theory of this action is well conceived, and under the proofs in this case the action can well be maintained; but the question is, were these Schuyler County bonds, and these Macon County bonds, and these securities thus obtained — did they become, the property of the company? Now, in point of fact, of course they never did; they parted with no consideration for them; they never bought them or intended to acquire absolute title to them; and, as between the company, the corporation, and the owners, there is no principle of estoppel which prevents an inquiry into the actual facts of the case; because the very essence of an estoppel is a representation which deceives some one who acts upon it.

Now the company was not deceived in this matter; they knew all the time why these bonds had been obtained, and the creditors were not injured by their return, because of the return of assets or property which had belonged to the company; for, as between the company and these men, the company never owned them; and Mr. Myers disclaimed in his argument the right to recover on the ground of estoppel; and he ultimately rested his case in his argument on this proposition: First, that these bonds were in fact, by this transaction, the bonds of the company; they were in possession of them; they had acquired and exhibited them as their own; and therefore he proved that fact, that these bonds were in possession of the company, and that they had exhibited them. He made out a *prima facie* case of ownership in the company of those bonds; and then, having shown that they had been returned without consideration to these parties, he says, "I have made out my case."

Now, in order to rebut that case, you have to show — the defendants have to show — the purpose for which they borrowed; in other words, they have to show they had committed a fraud and were parties to a fraud; and he says the law will not allow anybody to do that; no man can defend himself if he has to invoke a fraud in order to do it; and in that way he presses the case very strongly upon the attention of the court; and he says, "I want to know if that is not a sound position?" and he likens it to a case where, on considerations of *public policy*, a fraudulent grantor, conveying property in fraud of his creditor, is estopped from afterwards claiming it; and he calls attention to a case where that principle is carried so far in the State of Missouri, and I think justly, that, where a fraudulent grantee brought an action on a covenant for property conveyed to him in fraud, and his title failed, and he thereupon sued the fraudulent grantor on his covenant, and the grantor set up "I conveyed this property to you in fraud of my creditors," the Supreme Court of Missouri said we will not tolerate such a thing as that, and they held him liable on his covenant.

Now, then, I have felt some difficulty in my mind in reference to this case, particularly when I considered this element in it, that the *Laws of Missouri* contemplate an inquiry into the affairs of this company, an investigation into their condition, and an examination into their assets, and that these were actually exhibited, and I must take it, were intended to be exhibited, by the persons who loaned them to the Insurance Commissioner, for the purpose of deceiving the public.

If it were not for this element in the case, I should not have much difficulty about it; but still I regard the case different from what it would be if those assets were actually now in possession of the assignee, or had been in possession of the company and the owners were now trying to get possession of them. I doubt very much whether they could succeed in doing so. But the case is one where these as-

sets — which the company in fact never owned, and which there is no estoppel in the case preventing them from showing, or the defendants from saying they never owned — have been in fact returned to the owners. It is not a suit against the owner by a creditor, or person injured by their action in which they might be estopped in asserting that they had always been theirs; but it is a case, as I said before, resting alone on the proposition that these assets were borrowed and obtained for this temporary purpose, and became, as respects the company, and the rights which the assignee in bankruptcy represents, the property of the corporation; and the bill is a claim to recover, on the ground that these directors misappropriated the assets and are therefore personally liable.

Now, then, the answer that is made to this is this: That it is not competent for this assignee in bankruptcy, so to speak, to anatomise this transaction in the manner in which he seeks. He says, "I can make out a case when I show that these bonds were in possession of the company, and public policy will prevent the defendant from showing the circumstances under which the company obtained possession of them." It seems to me that when the assignee sues, that he then opens an inquiry, by the very act of his allegation, into the fact of the ownership of these bonds. It was just as wrong for this company to enter into this scheme to borrow the bonds, as it was afterwards to exhibit them; the whole was illegal from beginning to end. Now when the company says, or when the assignee representing the corporation says, that these bonds became and were the property of this company, he is seeking, from the very nature of the case, to take advantage of the fraudulent act of these directors in thus obtaining them. Now he wants to ratify the frauds; he says the fruit of this thing is the company's, but at the same time he wants to repudiate the transaction by which they became the company's.

Now I do not think he can do that. I think the very nature of the case opens an inquiry into this; and that,

under the circumstances, while, as I said before, I have some little doubt about it, my best judgment agrees with the judgment of his Honor, the District Judge, in saying there is no personal liability, under these circumstances, for a return of these Schuyler County and other bonds, and I accordingly affirm the decree below.

ASSIGNMENT OF ERRORS.

I. The court below erred in dismissing the bill as to the defendant sureties.

II. The court below erred in dismissing the bill as to the other defendants.

III. The District Court erred in not rendering a decree in favor of the complainant.

IV. The Circuit Court erred in affirming the decree of the District Court.

V. The Circuit Court erred in not rendering a decree in favor of the complainant.

POINTS FOR COMPLAINANT.

I.

Eliminating the testimony as to the borrowing of the bonds, etc., the complainant made out a clear case of ownership in the company, and misappropriation by defendants of the assets sued for.

II.

The defendants cannot predicate a defence on their own fraud and violation of express statutes. Public policy will not permit any one to invoke his own fraud and unlawful conduct as a defence any more than as a cause of action.

Tuckerman v. *Brown*, 33 N. Y. 297; *s. c.* 23 How. Pr. 109; 11 Abb. Pr. 389;
Henderson v. *Henderson's Executors*, 13 Mo. 151–153;
Mathews' Appeal (Sup. Ct. Pa.), 10 Reporter (No. 11), 344;
Montefiore v. *Montefiore*, 1 W. Black. 363;
Starke's Exr. v. *Littlepage*, 4 Rand. 368;
Evans v. *Dravo*, 24 Pa. St. 62;
Doe dem. Roberts v. *Roberts*, 2 Barn. & Ald. 367;
Brown, Rec., v. *Appleby*, 1 Sandf. S. C. 158;
Brouwer, Rec., v. *Hill*, 1 Sandf. S. C. 648;
Oslabar v. *Harrison*, Cumb. 348;
Cushwa et al. v. *Cushwa's Lessee*, 5 Md. 44;
Church v. *Church*, 4 Yeates, 280;
Ridgley v. *Crandall*, 4 Md. 435;
Gaff v. *Railroad*, 7 Casey, 489;
Robinson v. *Railroad*, 8 Casey, 334;
Stewart v. *Kearney*, 6 Watts, 453;
Sims v. *Tuffs*, 6 Car. & P. 207;
De Metton v. *De Mellon*, 2 Camp. 420;
Phillpotts v. *Phillpotts*, 10 C. B. 85; 7o Eng. Com. Law.
Stewart v. *Iglehart*, 7 ~~Har.~~ Gill & J. 132;
Lamb v. Clark, 5 Pick. 193.

III.

Even if the testimony were proper to be relied on by the defendants, still the law would consider the promise to return the assets as illegal and void. The original loan of the assets to the company created a valid trust in favor of its creditors. The condition that the assets were to be returned was invalid, and could not defeat the express valid trust.

IV.

The lenders were, in every instance, parties to the intended fraud. They could not, by law, have compelled the return of the securities; nor had they any moral claim to their return. In surrendering these securities, the defendants gave away what they were neither legally nor morally bound to surrender, and so made themselves liable to the corporation.

V.

If, by reckless inattention to the duties confided to them by their corporation, frauds and misconduct are perpetrated by officers, agents, and co-directors, which ordinary care on their part would have prevented, such negligent directors are liable for the loss so resulting. In the case at bar, not one of the directors attended to his duties. Everything was abandoned to the fraudulent secretary, Larrabee.

Robinson v. *Smith*, 3 Paige, 222;
Green's Brice's Ultra Vires (2d ed.), 484;
Percy v. *Millandon*, 3 La. 568; 8 Mart. La. (N. S.) 80;
German Savings Bank v. *Wulfekuhler*, 19 Kan. 60;
United Society v. *Underwood*, 9 Bush, 617;
Scott v. *Depeyster*, 1 Edw. Ch. 513;
Smith v. *Poor*, 3 Ware, 148;

Charitable Corp. v. *Sutton*, 2 Atk. 401;
Trustees, etc., Bank v. *Bossieux*, 3 Fed. Rep. (No. 14), p. 817;
Drury v. *Cross*, 7 Wall. 302.

VI.

The bond of the treasurer makes his sureties as much liable as himself.

a. That it mentions no obligee amounts to nothing. It is the same as if payable to bearer, or to whom it might concern. It was delivered to the company, and its language shows no one but the company could have been intended as the obligee. There is no ambiguity, and no room for construction.

b. Its language is broad enough to cover the assets in controversy. The word "moneys" covers bonds and other securities.

c. Besides, its terms require the treasurer not only to account for all "moneys" received by him, but also "well and faithfully to discharge the duties of said office" of treasurer.

VII.

The testimony is all before the court, and there is no conflict in any part of it. Hence, as the litigation has already lasted some years, we ask a final decree here in complainant's favor.

NATHANIEL MYERS,
For Appellant.

SUPREME COURT U.S.
FILED
NOV 22 1880
JAMES H. McKENNEY, Clerk

IN THE

Supreme Court OF THE United States,

No. 110.

TERM, A. D. 1880.

WILLIAM R. WALKER,

Assignee in Bankruptcy of the North Missouri Insurance Company, *Appellant*,

vs.

JOSEPH T. REISTER, et al.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

Statement and Brief for Respondents.

JAMES O. BROADHEAD,
Solicitor for Respondents

ST. LOUIS, MO.
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1880.

SUPREME COURT OF THE UNITED STATES.

[No. 110.]

WILLIAM R. WALKER, ASSIGNEE, ETC., *Appellant*,

vs.

JOSEPH T. REISTER, *et al.*, *Respondents*.

RESPONDENTS' STATEMENT AND BRIEF.

This suit was brought by appellant in the District Court of the United States, for the Eastern District of Missouri, to recover for the alleged misappropriation by respondents of certain alleged assets of the North Missouri Insurance Company, a bankrupt. Appellant charges that respondents, as officers and directors of said company, fraudulently and in breach of their trust as such officers and directors, misappropriated and converted to their own use certain bonds and notes, which appellant claims were the property of said company.

The bill filed by appellant states, in substance, as follows:

That the North Missouri Insurance Company was duly incorporated under the laws of the State of Missouri, for the purpose of carrying on the business of fire and marine insurance.

That on October 2nd, 1873, proceedings in bankruptcy were commenced against said company, in the United States

District Court, for the Eastern District of Missouri; that the company was duly adjudged a bankrupt, and William R. Walker was duly appointed assignee of the estate of said bankrupt and qualified as such: that all the property of whatever kind of which said company was possessed, or in which it was interested or entitled to have on said 2nd day of October, 1873, was turned over to said assignee by Lucien Eaton, Esq., one of the registers in bankruptcy of said court, on March 23, 1874.

That the business of the company, before it became bankrupt, was managed by a board of nine directors, whose duty it was to choose out of their own body a president, vice-president, secretary and treasurer, and to exercise a general supervision over its affairs, etc.

That at the annual election of such board of directors, held on the first Monday of July, 1872, certain of the respondents, to wit: John F. Williams, William Forbes, Albert Larrabee, James B. Melone, George P. Glaze, Joseph F. Reister, John M. Loudon, Philip F. Holman and Isaac Hays were duly elected directors; that they duly qualified and continued to act as directors until June 19th, 1873.

That during the month of July, 1872, said directors elected John F. Williams, president; Albert Larrabee, secretary; William Forbes, vice-president, and James B. Melone, treasurer of the company, who remained as the officers thereof until July 19th, 1873.

That James B. Melone gave bond as treasurer in the sum of $100,000, with Alfred L. Shortridge, Web. M. Rubey, Benjamin R. Dysart, Richard A. Melone, Henry S. Glaze, Eli C. D. Shortridge and Charles G. Epperson as sureties. Afterwards, on motion, the cause was dismissed by the court as to the above mentioned sureties.

The bill further alleges that during the time said board of directors were in office, this company owned and possessed, among other things, the following bonds:

	Total par value.	Total market value.
Schuyler County, Mo., - -	$25,000.00	$ 63,750.00
Macon County, Mo., - - -	31,500.00	26,755.00
Burlington & Southwestern R. R. Co., - - - - - -	13,000.00	11,050.00
Knox County, Mo., - - -	8,500.00	7,225.00
Normal Schools' Bonds of Adair County, Mo., - - -	350.00	295.40
One Masonic Bond - - -	100.00	———
Also a certain promissory note, made by one Wm. E. Moberly for $27,000, on which was credited $13,500 - - -	———	13,500.00
Also another promissory note, made by said Moberly for -	———	13,500.00
Making altogether notes and bonds of the real value of - -		$136,195.40

That said bonds and notes came into the possession of Melone as such treasurer, and remained in his custody and possession as treasurer until they were disposed of, as afterwards stated; and that during all the time they were in Melone's custody, as aforesaid, they were under the control of said directors.

That by the laws of Missouri then in force, relating to Fire and Marine Insurance Companies, incorporated under the laws of this State, it was provided among other things that it should be the duty of the president and vice-president and secretary, or a majority of the directors of every such Insurance Company, annually, on January 1st, or within thirty days thereafter, to prepare under oath and deposit, in the office of the Superintendent of the Insurance Department of Missouri, a statement made up for the last fiscal year

of said company; showing, among other things, the property and assets held by such company; specifying among other things the amount of loans secured by bonds and mortgages, or by deeds of trust, the amount of bills and notes receivable and maturing, and the amount of other securities held by said company, specifying what they were, and as near as may be their cash value; and further, that it should be the duty of the Superintendent of the Insurance Department, whenever he should have good reason to suspect the affairs of any such campany to be in an unsound condition, to require of such company a special statement of its affairs; and if such Superintendent should not be satisfied that the affairs of such company were in a safe condition, then he should have power to make a personal examination of such company.

That on or about January 1st, 1873, the directors caused to be prepared a statement under oath, and to be deposited in the office of the superintendent of the Insurance Department of Missouri; and among other assets set forth in said statement, were said Macon and Schuyler County bonds, and the Moberly notes, which were represented as being of the real values heretofore set forth; and afterwards in May, 1873, said Superintendent made a personal examination of the affairs of the company, and respondents, as directors and officers, represented to him that the company owned all the bonds and notes above mentioned, and that the same were of the real values above stated; they also made the same representations to the Superintendent of the Insurance Department of Ohio; and said directors made frequent representations to the public through the press, and otherwise to the effect, that said assets belonged to the company, and that they were of the value aforesaid; by reason of which the company acquired and maintained an extensive credit, amounting in the aggregate to over $500,000, and was enabled to carry on and continue its business, and to induce policy holders to continue its policies in force, under which policies losses have since occurred, and which still remain unpaid, and have been proved against the estate of the In-

surance Company in bankruptcy, to an amount exceeding $500,000; which amount the assets of said estate, including the assets hereinbefore described, are entirely inadequate to pay and satisfy.

The bill further charges that the directors and officers, with intent to cheat and defraud the company and its creditors, parcelled out and distributed the said notes and bonds among themselves and their friends, at some time prior to June 19th, 1873, wholly without consideration and in disregard of their duty as such directors and officers, by reason of which the said bonds and notes became and were wholly lost to the company and its creditors.

The bill prays, that on account of said bonds and notes may be taken; that a decree may be rendered against the sureties on the treasurer's bond for $100,000, and against the officers and directors for $136,195.40, and for general relief.

To this bill respondents, Jos. T. Reister, John F. Williams, Geo. P. Glaze, John M. Loudon, Philip T. Holman, Isaac Hays and James B. Melone, answered in substance as follows:

They say that the North Missouri Insurance Company was duly incorporated and duly adjudged a bankrupt, and admit that complainant was duly appointed its assignee in bankruptcy, and, as such, is entitled to all the property of which the company was possessed, interested in, or entitled to have on the 2d of October, 1873. They deny that the company was possessed of, interested in, or entitled to have any of the notes and bonds described in the bill, as averred.

They say that they were on the first Monday in July, A. D., 1872, together with William Forbes and Albert Larrabee, duly elected, and thereafter duly qualified as directors of the company, and continued to act as such until about the 13th day of June, 1873, but no longer; when their successors were elected and qualified, and they deny any breaches of trust, as alleged.

The respondents further answering denied that the Insur-

ance Company whilst they were directors, was the owner of any of the bonds or notes described in the bill, or that they came into the possession of Melone as treasurer of the company, or that they were under the control of these defendants as directors of the company. They further deny that they caused to be prepared under oath, or to be deposited in the office of the Superintendent of the Insurance Department of Missouri, a statement made up as alleged in the bill, or that any such bonds or notes were set forth in any such statement as belonging to the company. But they say that on subsequent information and belief they ascertained that a statement purporting to be a statement of the affairs and condition of the company was prepared by Larrabee, the secretary of the company, and filed with the Superintendent of the Insurance Department of Missouri; but that they did not make or have any knowledge of the making of any such statement, or recognize or sanction it; that having full faith in the ability and integrity of the said Larrabee, and having no reason to suspect his honesty, they gave but little attention to the management of the affairs of the company so far as the statement of its affairs was concerned, except as they were reported to them by the said Larrabee, who had the control and management of the routine business of the company; that the statement referred to was made by said Larrabee without their knowledge or consent, except that the same was presented to the said Williams, who, upon representations made to him by Larrabee, and being assured by the said Larrabee, that the statement was correct, signed the same as President, relying solely upon the said statement of Larrabee. But they say that it is not true that the Insurance Company owned or held any of said bonds or notes, nor did they ever represent to the Superintendents of the Insurance Departments of the State of Missouri, or of the State of Ohio, that the Insurance Company was the owner of any such bonds or notes.

Respondents also deny that the said Insurance Company

acquired or maintained any credit, or that the policy-holders were induced to continue their policies in force by reason of any alleged ownership of any of said bonds or notes. They deny further that they parcelled out or distributed any of said bonds or notes amongst themselves or their friends at any time, or that they procured the said treasurer to unite or co-operate with them in so doing.

The bill was dismissed as to Forbes and the secretary, Larrabee.

The first witness examined by the complainant was Albert Larrabee, the secretary of the company, who, amongst other things, stated that the various assets of the company were in his custody during the time he acted as secretary. He acted as secretary up to the time the company was put into bankruptcy. He says that Mr. Melone, the treasurer, had the custody of the bonds of the company, and that Mr. Melone at that time was cashier and manager of the Bank of Melone & Epperson at Macon City, Mo., the place where the office of the insurance company was kept, and that he kept the bonds of the company in the safe of the Bank.

In May, 1873, Mr. Church, the Insurance Commissioner of the State of Ohio, and Mr. Selby, the Commissioner of Missouri, made an examination of the condition and assets of the insurance company. "The bonds referred to were exhibited to them, in my presence, by Mr. Langdeau, the bookkeeper of the Insurance Company, and they were produced by Mr. Melone, the treasurer, from the vaults of the bank where they had been placed by Mr. Langdeau, the bookkeeper, and the man who made out the account showing the condition of the insurance company." "Mr. Langdeau had always made out our statements, except at one time when he had the assistance of Col. Curtis. I don't know whether the directors knew whether Mr. Langdean had commenced making out this statement." The witness stated that he did not know whether Mr. Melone, the treas-

urer, knew the contents of the packages containing the bonds when he handed them out for examination.

The witness was present when Mr. Church made the examination of the securities, but Mr. Melone was not present; "but I suppose was engaged about the ordinary business of his bank—to which he returned after delivering the securities." He (Mr. Melone) was informed of the object of Mr. Church's visit, and when the packages were delivered, he returned to his business in the Bank. Witness could not say that any one had a hand in making out the statement of the condition of the Insurance Company except Mr. Langdean, the bookkeeper; thinks it was wholly prepared by him.

Mr. Melone was never designated specially as the custodian of the securities of the company.

Bight G. Barrows, one of the directors of the Insurance Company, but not a defendant in this suit, testified that he procured the $75,000 of Schuyler County bonds from Mr. Drake to whom they belonged; that he first got them from Mr. Baker, and deposited them for safe keeping with Mr. Melone as banker, taking his receipt for them; then got them from Melone, giving up to him his receipt, and then with the consent of Mr. Drake and Mr. Baker delivered them to Mr. Larrabee, the secretary of the company, who wanted them to exhibit to Mr. Church for the company. Mr. Larrabee kept them about thirty-four hours, and then they were returned to Mr. Drake who owned them.

Witness further said that he furnished Larrabee with the Adair Normal School Bonds, and with the Masonic Bonds, and that these bonds were delivered to witness.

Byrne Griffith testified that he let Mr. Jones and Mr. Clemens have bonds for a short time to the amount of $14,500; that he took Larrabee's receipt for them; that the bonds were his and that they were returned to him the same day—except a small amount—the bonds furnished by him included the Knox County Bonds and the Omaha Bonds—the Construction Bonds.

It may be stated briefly that all the bonds and notes mentioned in the bill were embraced in the schedule of assets furnished to the Insurance Commissioners, and were shown to the Commissioners as assets of the Insurance Company; but the testimony shows that none of them were owned by the Insurance Company, but were merely loaned to the company for the purpose; but it does not clearly appear that any of the defendants, except Larrabee, knew of the purpose for which these bonds and notes were furnished.

Church, the Insurance Commissioner, testifies that the bonds and notes were shown to him by Mr. Larrabee, as assets of the company.

None of the defendants took any of these bonds or notes to their own account, but they were returned by Mr. Larrabee to the owners, a short time after they were received. Mr. Melone, the treasurer, had charge of these assets, and they were produced by him before the Insurance Commissioners, when the examination was made; but it does not appear that Mr. Melone knew the purpose for which the bonds were held, nor to whom they belonged.

None of these assets were found in possession of any of the officers of the Insurance Company, at the time the assignee took charge of the effects of the company. None of the defendants derived any interest, or were paid any money on account of these bonds and notes.

It does not appear from the testimony, that the Insurance Company obtained any credit by reason of the exhibit made by the use of these bonds and notes, or that any policies of insurance were issued or renewed after the exhibit was made; and it was but a short time thereafter that proceedings in bankruptcy were commenced against the company; an adjudication in bankruptcy had, and an assignee appointed.

John F. Williams, the president of the company, appears to have sworn to the annual statement, made of the affairs of the company, which included these bonds and notes as a part of the assets of the company.

But he swears that he has very little to do with the accounts of the company; that he was a lawyer in full practice; that Larrabee was the business man of the company, and the only one who knew much about the insurance business; that he was in the habit of signing policies, checks, certificates of stock and other papers in blank, leaving them to be filled up by Larrabee: and that he had the utmost confidence in the integrity and business capacity of Mr. Larrabee.

Williams, in his testimony, also states that "the January statement of 1873, was made up in the office I suppose, by Col. Curtis and others. (Curtis was one of the clerks of the Insurance Company). Col. Curtis came into my office with a statement made up for January, 1873, for the Insurance Company, signed by Mr. Larrabee, and told me he wanted my signature. I asked him if it was all right. He said it was so far as he knew; that he had made it up from data that had been given him by the officers of the company; it was signed by Mr. Larrabee, and he laid the statement upon my desk, at which I was at work at the time, and I signed the statement; he took it and carried it out; he was not in my room two minutes; I never examined the statement then, and never have examined it to this day; never saw it before or since; he further says, that if he had examined the statement, he could have received no information about the assets of the company except from Mr. Larrabee; that it would have taken months to go through the books of the company; that he relied entirely upon the integrity of the secretary; and that he never heard, and never suspicioned that there was anything wrong in that January statement, until after the visit of Mr. Church and Mr. Selby in May, 1873.

And the statement of the witness in these respects are not contradicted by any other witnesses, and are substantially corroborated by Mr. Larrabee.

Upon a hearing of the case before the District Court, the bill was dismissed, and an appeal taken by Walker, assignee,

to the Circuit Court, where the judgment of the District Court was in all things affirmed.

BRIEF.

I. It is not very clear, either from the bill in the case, or from the arguments before the lower courts, upon what intelligible ground of equitable jurisdiction the complainant seeks relief against the directors or other officers of the North Missouri Insurance Company.

It is clear from the allegations in the bill that he did not expect to prove that the company ever had title to the bonds or notes in question, although it is alleged that the company was the owner of them; but not satisfied with the allegations of ownership, the complainant then goes on to allege that they were embraced in the January statement as the property of the company, and that they were afterwards shown to Church, the Ohio Commissioner, as the property of the company, with the view of laying the foundation for the claim that defendants were estopped from denying the ownership in the company. In other words, he first avers that these bonds and notes were the property of the company, and then, that the defendants admitted that they were the property of the company.

The first averment would be amply sufficient to lay the foundation for the subsequent averment that the defendants afterwards fraudulently parcelled them out amongst themselves and their friends.

The admissions of ownership could not add anything to the strength of ownership; and there certainly could not be anything wrong in the admission, if they admitted what was true.

This averment of the admission must, evidently, have been made with the intention of attempting to estop the defendants from denying the company's ownership of the bonds in question.

All the proof shows that these bonds and notes were not

owned by the company. The complainant's own witnesses show this beyond controversy.

The case then is narrowed down to this, viz: that in truth they were not the property of the company, but that the defendants admitted that they were the property of the company; and therefore, as they gave them back to the owners, they are liable as for a conversion of so much property of the company, or for a breach of trust in wasting the property of the corporation.

True, it is averred that the statements and representations of the directors, in regard to the ownership of the bonds, gave the company a fictitious credit, by which policy-holders were induced to continue their policies in force, under which policies losses have occurred, which still remain unpaid. If this were so, doubtless, an action of deceit would lie in favor of those, and those only, who had been damaged by the deceit, and not in favor of the company or the creditors of the company. Such damages to individuals could not surely inure to the benefit of the general creditors, who were not injured by the deceit. This claim, however, is as barren of evidence as it is of law to sustain it, and therefore no further notice will be taken of it.

The only ground therefore, upon which the complainant in the court below finally rested his claims, was, that under the circumstances this property must be treated as the property of the corporation, so far as the directors are concerned; that by their acts and admissions they are estopped from denying that the company owned it.

This suit is in the nature of a bill in equity, brought by an assignee in bankruptcy.

"Controversies, in order that they may be cognizable in the Circuit or District Courts, under the third clause of the second section of the Act, must have respect to some property, or rights of property of the bankrupt, transferrible to, and vested in such assignee." See Stickney v. Wilt, 23 Wall., p. 160. So that any bill in equity, which can be entertained in the District Court, must be touching property

or rights of property, transferred to, or vested in the assignee by the deed of assignment. Was this property transferred to the assignee? The company paid nothing for it; had it in its possession for a limited time, under an arrangement with the true owners, by which it was to be returned; and it was returned before the assignee was appointed. I am now arguing the case upon the assumption, that this whole arrangement was an act of the directors, which we deny, but, for the purposes of this argument, may be admitted.

The bill alleges, that through the *fraud and breach of trust* of the officers and directors of the company, this property was lost to the company. This averment was necessary to give a Court of Equity jurisdiction, because otherwise, it is a simple, common-law action for the conversion of property; but in what does the fraud consist? Certainly not in returning the property to the parties who owned it; if there was any fraud, it was in representing that the bonds were the property of the company, and then giving it up to the parties who claimed it. But that could not change the ownership of the property; a fraudulent act on the part of the officers and directors could not give title in the company, to the property for which the company had given no consideration. If any one was damaged by the fraud, the persons sustaining the damage would be entitled to sue; but the company was not damaged, unless it owned the property; and it is claimed that it owned it through the fraudulent admissions of the defendants. Can that give title to the property, as against any one?

The result of the argument of the complainant is just this, and nothing more, viz:

That the company through its assignee has shown, by its *own witnesses*, that this company never paid for the property; *never gave any consideration whatever for it*; never *lost anything by reason of any of the transactions connected with it*; *but*, inasmuch as its officers have practiced a fraud *upon the officers of the Insurance Department*, in claiming

that it was the property of the company, it did therefore become the property of the company; and the right to it, or in respect of it, if it wrongfully passed out of the possession of the company, passed to the assignee in bankruptcy. We submit that, from the facts as they appeared in evidence, the company never had any property right, in regard to these bonds, which could pass to the assignee in bankruptcy.

"Concurrent jurisdiction (says Judge Clifford, in case of Stickney v. Wilt, 23 Wall. 159), with circuit courts is conferred upon the district courts, of all suits at law or in equity, which may or shall be brought by the assignee in bankruptcy against any person claiming an adverse interest, or by such person against such assignee, touching any property or rights of property of such assignee, transferred to or vested in such assignee, by virtue of the 14th section of the Act providing for such transfers."

The district court in this respect is a court of limited jurisdiction, and is confined to questions touching property or rights of property transferred to or vested in the assignee by his deed of assignment. The defendants themselves do not claim this property, and therefore it is not the case of a person claiming an adverse interest in the property; but, if any thing, it is a case of constructive trust created by a fraudulent act which inures to the benefit of the company, and for the breach of which the assignee asks an accounting and damages—does the equitable jurisdiction of the District Court of the United States in cases of bankruptcy embrace any such case as this?

If the bonds were in truth and in fact, and not by mere fiction, the property of the company, the courts of law are open to the assignee to sue in trover, or in any other form of action at law he might select.

Trusts are peculiarly the subjects of equitable jurisdiction, but we deny that a claim for damages for breach of a constructive trust is property or a right of property which can pass to the assignee, so as to give a district court jurisdiction over it.

II. *As to the doctrine of estoppel in this case.*

It is claimed that the statements which the officers of the company made to the Insurance Department, estop them from denying that they *individually* have converted to their own use and to that of their friends, when they were parcelled out as averred in the bill, the securities in question.

We submit that this is not a case of estoppel.

An estoppel excludes the truth; it will not permit the true facts in the case to be proven, but it must be mutual.

"Estoppel ought to be reciprocal or mutual—that is, to bind both parties—and this is the reason that strangers shall not take advantage of, nor be bound by an estoppel."

Herman on Estoppels, 18.

"Estoppels must be mutual; there can be no estoppel upon one party, unless the other is equally estopped."

Herman on Estoppels, 251.

See, also,

Hempstead v. Easton, 33 Mo. 142.
Shuhman v. Garratt, 16 Cal. 100.
Canadine v. Canadine, 33 Miss. 698.

The essence of an estoppel is, that good faith and fair dealing requires that he ought to be deprived of the right to prove that to be false which by his means has once become accredited for truth, and thereby led others to act to their injury; but it is not every false affirmation by which a party is induced to act to his injury, or by wkich he has been deceived, that amounts to an estoppel; there must be some business relation or transaction between the parties, or those under whom they claim, and in regard to which mutual obligations have arisen.

A *feme covert*, for example, is not estopped by the covenants in her deed, except so far as being executed in accordance with law; and hence a recital in a deed, made by a married woman to the effect that she had previously made a conveyance of a part of the same land to H, does not

estop her, and therefore her *grantee* is not estopped to set up title to the land conveyed to H, for two reasons:

(*a*) Because the estoppel is not mutual—the grantor, being a married woman, is not estopped, and therefore her grantee is not estopped.

(*b*) Because estoppels exist only between parties and privies; and as the grantee in the first conveyance was neither party nor privy to the second, the grantee in the second conveyance is not bound.

Hempstead v. Easton, *supra*.
Cottle v. Sydnor, 10 Mo. 764.
2 Am. Leading Cases, pp. 514–516.

"Every estoppel," says Coke, "ought to be reciprocal, and that is the reason that regularly a stranger shall neither take advantage of nor be bound by estoppel."

Now in the case before the court, it is the act of the officers as individuals that the complainant, as the representative of the corporation, is seeking to take advantage of; and that was an act or transaction, not between the company and the officers, but between the officers and the State, or the public, or the policy-holders. So soon as it is admitted to be an act of the company, it ceases to be an act of the officers as individuals; and if it be an act of the company, then the company is estopped from impeaching it, and could have no claim against the officers, and the assignee, represents the company, and can have no right which the company did not have; except in the case of fraudulent assignments, where for the benefit of creditors he might impeach the acts of the corporation. So that the company was not a party to the transaction, nor was it a privy, because, although the company might have derived some interest or profit from the showing of these securities as part of their assets, it was not a legitimate profit or interest, and a party cannot become a privy by reason of a fraudulent act, nor was there anything reciprocal or mutual in the transaction.

It was a mere representation or admission, which in a

legal sense has hurt no one nor misled any one—certainly not the company;—and it is no more an estoppel, than if an officer had proclaimed upon the streets or the highway, that the company had a surplus of capital of $1,000,000, or should issue a circular stating that fact in order to bring business to the company; nor is it more of an estoppel that would be the act of a defendant in ejectment, who should set up an outstanding title to defeat the action.

As to the general nature of an estoppel, there can be no better rule than that laid down by Lord Denman in the case of Packard v. Sears, 6 Ad. & El. 475.

"The rule of law is clear, that where one by his words or conduct, wilfully causes another to believe in the existence of a certain state of things, and induces him to act on that belief, so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time."

Baron Parke afterwards (12 Jur. 777) said, that the rule in Packard v. Sears was considered as established, but that the term "wilfully" in that rule, must be understood, if not that the party represents that to be the truth which he knows to be untrue, at least, that he means his representation to be acted on, and that it is acted on accordingly."

And this court, in the late case of Dickerson v. Colgrove, 100 U. S. Reports, p. 580, Justice Swayne delivering the opinion, lays down substantially the same rule as follows:

"The law in regard to equitable estoppels, or estoppels in pais is well settled. The vital principle is, that he, who by his language or conduct leads another to do what he would not otherwise have done, shall not subject such person to loss or injury by diappointing the expectations upon which he acted."

And further in the same case, the learned judge says:

"This remedy is always applied so as to promote the ends of justice. It is available only for protection, and can not be used as weapon of assault. It accomplishes that which

ought to be done between man and man, and is not permitted to go beyond that limit."

To say that an estoppel "*establishes that which ought to be done between man and man*," is perhaps the best definition that has ever been given of an equitable estoppel. As between man and man, what ought to be done in this case? As between the company and the officers, the officers have made a misrepresentation of the affairs of the company, for the benefit of the company, in order to keep up its credit, and now the company seeks to take advantage of that act to the prejudice of the officers. By the act the company never sustained any damage, never lost any property, was not misled to its prejudice or otherwise; but asks the intervention of a Court of Equity, to enable it to speculate upon the falsehoods of its own officers told for its own benefit; for they did not seek to derive, and did not derive a personal advantage from the transaction; Courts of Equity were never created to foster so gross an outrage upon justice and fair dealings.

III. It being apparent from the evidence that the company never owned the property in question, the claim is one which the assignee as such has no right to prosecute.

The assignee may sue for and collect whatever property the company actually owned; but the property which the company deceitfully said it possessed, to the injury of either creditors or policy holders, did not pass to the assignee, and may not directly or indirectly be recovered by him in any forms of action, either legal or equitable. Those who are affected by the deceit alone can sue. The assignee is the agent and trustee for the creditors, but does not represent the wrongs of any one. In actions arising *ex delicto* the party injured must sue. If he could sue in a case, such as this is represented to be, for damages caused by giving a false credit, by which a creditor or policy holder was injured, the damage recovered would go to the benefit of all creditors and stockholders, and this could not be.

In the case of Bristol, Assignee, v. Sanford, XIII, B. R., p. 78, Judge Woodruff held that:

The assignee of a bankrupt corporation does not represent creditors, so as to be able to prosecute their claims against a trustee, who has rendered himself individually liable to them by making a false report.

"He is in no such sense a trustee of the creditors, that he can prosecute such a claim. Whatever rights the creditors have, whether legal or equitable, the assignee must leave them to pursue."

And this now seems to be the well-settled doctrine.

It would be doing injustice to the defendants in this argument, not to state to to the court that a careful examination of the testimony in this case will show that the secretary of the company, Albert Larrabee, was the officer solely responsible for the fraudulent showing of assets appearing in the January statement of the affairs of the company, and that he produced the bonds and notes for the inspection of the Insurance Commissioners as the bonds and notes of the company. The statement, required by law to be made, was not required to be made by the directors, but by the president or vice-president and the secretary, or a majority of the directors. See sec, 23, art. 3, Wagner's Statutes. In this case it purports to be made by the president and secretary. The president says he signed it without knowing what was in it, but relied solely upon his confidence in the secretary. Neither the directors nor the treasurer seem to have had anything to do with it, so that there does not seem to have been any actual representation by any of the officers, except the secretary, that these bonds and notes were the property of the company; but it is so clear to us that, if it were so, the assignee has no right to bring this action against them, that we will not trouble the court further with the case.

J. O. BROADHEAD,

Solicitor for Respondents.